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In Memoriam

REV. STANISLAUS WOYWOD, O.F.M., J.C.D.

On September 22, 1941, the absolution was given by Most Rev. Thomas H. McLaughlin, Bishop of Paterson, over the remains of a fervent, if modest, promoter of the science of Canon Law in the United States. More than half of his sixty-one years were gladly sacrificed in its interests through study, lectures, articles, and books. He willingly assumed the perils of marching in the vanguard; or perhaps he was so devoted to his science that he ignored them. Those who follow, in the present as in succeeding generations, can never forget the courage by which he, prominent among a few co-laborers, opened up the territory through which it is now so much easier to advance.

His example will stimulate the timid to enter the lists as blithely as he did. It will thus continue to promote the journals which were proud to record his comments. So THE JURIST, which was privileged only by his promise to make it his beneficiary, will become so, though only in virtue of his legacy. For to it, as to every agency laboring to vindicate for Canon Law its rightful place, he has bequeathed a name that for posterity will be prolific of emulation, as for us his pen was, in its own right, prompt, fertile, and opportune.

For such a legacy, a debt of prayer is due, great enough to be immeasurable. May those for whom he has made straight the way do as much for him.

MONSIGNOR FRANZ GILLMANN

Msgr. **FRANZ GILLMANN** passed away in Würzburg, Germany, at the age of seventy-six. In him, our science deplores the loss of

one of the most eminent and subtle scholars in the historical field, particularly in the history of medieval canonical jurisprudence. Msgr. Gillmann was born in 1865 in a little town of the Palatinate. After the termination of his theological studies, and after a short period of parish activity he taught first at Munich, whence he was called in 1904 to the University of Würzburg. For over thirty years he lectured there in Canon Law, History of Dogmatic Theology and constitutional history of the Church. Generations of priests have gone through his classes and learned more from him than merely the immediate subjects of his courses: he knew how to foster in his students the ardent love for research by his own exemplary work.

His was not the rhetorical brilliance of a great synthesist, he conceived the task of the historician as a patient devotion to the analysis of details, to the scrupulous examination and comparison of texts. Of this mind, his ever-growing literary production gave an eloquent testimony. After initial studies on various topics he turned to investigations into the history of sacramental theology, and quickly found that without a most solicitous examination of the unprinted manuscripts of the medieval theologians and canonists no safe result could be obtained. Soon he was bound to discover that the information to be obtained from the current handbooks on the literary history of Canon Law was very superficial, and consequently he reexamined this whole field more closely than anybody had done before him. He read and copied the manuscripts of these medieval writers as far as he could get hold of them (especially those preserved in German libraries) and published the results of his researches in innumerable articles. The readers of the periodicals "Der Katholik" and "Archiv für katholisches Kirchenrecht" could find nearly every year one or more highly technical articles from his pen, always full of new information on, and careful critical discussions of medieval texts, with editions of fragments from the old glossators etc. In these numerous works, our knowledge of early canonical jurisprudence has been increased enormously.

It is regrettable that the strictly analytical attitude of the great scholar and his profound erudition were coupled with an anxious aversion to popularity. His shyness induced him more and more to write only for the initiated experts, to present his researches without any regard for the capacity of the average reader. Thus many may have passed hastily over his most learned studies, misjudging them as dry and as overstuffed with textual criticism, without even

noticing that each of these articles marked important progress in our science. Therefore, the outstanding production of Gillmann did not find perhaps the public renown it deserved. And we may regret that he never wrote that comprehensive synthetical treatise on the canonists of the middle ages to which his singular knowledge would easily have been equal, and from which his exemplary modesty always shrank away.

But nobody who investigates in this highly important historical field and who tries to carry on the work left by the great master of Würzburg, can easily pass over his legacy. More than any of the better known, often quoted text books, his scattered articles and studies will help the true scholar, as an inexhaustible source of information, to find the right way to the medieval dawn of our own science.

REV. BERTRAND KURTSCHEID, O.F.M.

Father BERTRAND KURTSCHEID who died in Rome at the age of sixty-four has been for scores of years a well known personality among the canonists of the eternal city. Born in 1877 in the province of Westphalia, Germany, he had entered before his twentieth year the order of St. Francis and dedicated himself to studies in Historical Theology and Canon Law. In 1912, when he had obtained the doctoral degree and was Lector in one of the study houses of his order, he published his learned monograph on the seal of confession, of which fifteen years later a revised and enlarged edition appeared in English ("A History of the Seal of Confession," St. Louis: Herder, 1927).

Fr. Kurtscheid's careful investigation, his sound conclusions, the clear line of his narrative, have been highly appreciated everywhere. Meanwhile he had published other valuable studies concerned with the life and works of some of the earliest franciscan canonists of the thirteenth century.

After the World War, his superiors sent him to Rome in order to make available his gifts as a scholar and a teacher for the international franciscan University of St. Anthony's (Antonianum). As a professor of Canon Law and of Moral Theology, later on also for several years as Rector, he served faithfully this outstanding school of his order. Soon his special preparation in the historical field drew

the attention of the Pontifical Institute of Canon and Civil Law at St. Apollinare's (which later became the Faculty of Law of the Papal University at the Lateran) upon the learned Franciscan. From then onward, he had to divide his teaching activities between the Antonianum and the Papal Institute where he lectured on History of Canon Law. His classes were not only the first ever given on this subject in Rome, but also of the highest scholarly standard. The heavy duties of teaching in two schools, and of directing numerous theses—he encouraged and conscientiously supervised many historical dissertations in Canon Law—did not remain his only burden: various of the Sacred Roman Congregations, as well as the Franciscan General's Curia, secured his collaboration as a permanent consultant in jurisdictional and administrative matters. He dispatched all this work with sagacity and exactness, and his canonical opinions were always much appreciated in the Vatican offices.

But these manifold charges did not leave to him, as he often stated regretfully, any time for continuing his own research work, as he would have liked to do. In this later period of his life he published but small articles in periodicals and encyclopedias; his main forces he dedicated, in a truly franciscan spirit of self-denial, to his superiors and to his students. It was at the insistent request of the latter that he finally resolved to edit the lectures he had given for many years, in book form. An incorruptible critic of his own, not less than of the work of others, he had hesitated for a long time to do so.

But notwithstanding that he was overworked, and that his health was affected by an insidious gastric ailment, he kept his promise. Shortly before his death he published his "Methodologia historico-juridica" and the first volume of a "Historia Juris Canonici." Modest to the last, he put the words "ad usum scholarium" on the title and protested in a short preface that he knew very well the imperfection of his work. And yet, we know it better: these books, devised as class texts only, are the ripe fruit of a life of patient, reliable and careful study, and they show a rare insight into the essential historical trends and developments of Canon Law.

His students as well as his fellow canonists will cherish the memory of the unwearied, gentle and pious teacher and scholar.

THE SO-CALLED LAURENTIUS-APPARATUS TO THE DECRETALS OF INNOCENT III IN COMPILATIO III[1]

OF the great body of the literature of medieval Canon Law, the glosses of the decretalists as a source of legal thought in the period from Alexander III to Gregory IX (1159-1234) have been relatively neglected.[2] Even the history of the literature inspired by the papal decretals in these years has only recently challenged a truly systematic

[1] This study owes much to the expert advice generously given by Professor Stephan Kuttner of The Catholic University of America. My debt to his solid learning and scholarly counsel will be apparent throughout. Originally written (in 1937) for publication in the *Archiv für katholisches Kirchenrecht,* the editor of which, N. Hilling, definitely assured its appearance in the volume for 1940, the article has not yet been printed. I present it now, in abbreviated form, in THE JURIST. Fortunately the delay has permitted me to incorporate suggestions and corrections offered by Kuttner.

An explanation of the curious history of my little study must be given, both for my own justification and for the benefit of the reader. I published my first study of this *Apparatus* in the *Archiv*, 1937: "Some Unpublished Glosses (*ca.* 1210-1214) on the *Translatio Imperii* and the Two Swords," CXVII, 403-29. Prof. Franz Gillmann's attempt to ascribe the *Apparatus* to Laurentius Hispanus meanwhile having appeared (*Des Laurentius Hispanus Apparat zur Compilatio III auf der Staatlichen Bibliothek zu Bamberg*; Mainz, Verlag Kirchheim, 1935), in 1937 I wrote the lengthy criticism of his conclusions which was to be my second study in the *Archiv*; as said above, this article was promised by Hilling for 1940 at latest. Then came a new article by Gillmann, "Des Johannes Galensis Apparat zur Compilatio III in der Universitätsbibliothek Erlangen", *Archiv,* CXVIII (1938), 174-222, which I supplemented with my *third* study, accepted by Hilling and actually published in 1939, "Additional Glosses of Johannes Galensis and Silvester in the Early Tancred or So-called Laurentius-*Apparatus* to *Compilatio III*", *Archiv,* CXIX, 365-75. But this third article presupposed the publication of the second one, which in detail demonstrated my method, as opposed to Gillmann's, of studying an unidentified *Apparatus.* Now, strangely, the editor of the *Archiv* has just published (1940—I have not yet received a copy) an article by Gillmann criticising my third article without his having seen the *second* article. I do not need to emphasize the curious nature of Hilling's editorial policy!

exploration for ultimate publication and exploitation.[3] The survey of the glosses and *Apparatuses* of the early decretalists was started, however, seventy years ago by J. F. von Schulte.[4] In the last thirty years and more, numerous articles and monographs by Professor Franz Gillmann have been an invaluable continuation of Schulte's work.[5] But it is some of Gillmann's recent studies that, because of their importance in establishing methods to determine the sources and authorship of early *Apparatuses* of glosses, need a critical examination.[6]

Among those who commented on the *Compilatio III,* which was issued in 1210 at the command of Pope Innocent III,[7]

Thus it is that I strongly feel the need of presenting a summary (I omit only the repetitious details in the citation of numerous glosses in the original study) of my *second* article in THE JURIST.

[2] There are exceptions, of course: e. g., Stephan Kuttner, *Kanonistische Schuldlehre von Gratian bis auf die Dekretalen Gregors IX* (*Studi e Testi,* 64); Città del Vaticano, Biblioteca Apostolica Vaticana, 1935. But generally content to study the legal thought in the *Glossa ordinaria,* Innocent IV, Hostiensis, Guillaume Durand, and Johannes Andreae, that is, in the great canonists from the middle thirteenth century on, modern scholars have overlooked the great value of the decretalists who, from about 1190 to 1225, formulated much of the thought later expressed by Hostiensis and others. This is because most of their glosses (except for a little of the work of Bernard of Pavia, Johannes Teutonicus, and Tancred) remain in the MSS. unless cited by the later canonists in works published in the late fifteenth and the sixteenth century.

[3] This work has been entrusted to the direction of Stephan Kuttner; see the beginning in his own invaluable survey of the MSS. in *Repertorium der Kanonistik* (*1140-1234*). *Prodromus Corporis Glossarum,* I (Città del Vaticano, Biblioteca Apostolica Vaticana, 1937). Unfortunately Kuttner's work has been interrupted by the war. May he soon be able to continue it.

[4] "Literaturgeschichte der Compilationes Antiquae", *Sitzungsberichte der Kaiserlichen Akademie der Wissenschaften zu Wien, Philos.—Hist. Cl.,* LXVI (1871), 51-158 = *SBW.*

[5] His studies are too numerous to list here; they have nearly all appeared in the *Archiv für katholisches Kirchenrecht* (= *AKKR*), especially since 1918. I shall mention only those which are pertinent to my present study.

[6] This is not to belittle his great contribution to our knowledge of the literature; it is to see whether his method of identification is always valid.

[7] J. F. von Schulte, *Die Geschichte der Quellen und Literatur des Canonischen Rechts von Gratian bis auf die Gegenwart* (3 vols.; Stuttgart, 1875-80), I, 87; Kuttner, *Repertorium,* I, 355.

Laurentius Hispanus, it has long been known, was the author of numerous glosses;[8] and some glosses were written by Silvester and Johannes Galensis, while *Apparatuses* were compiled by Vincentius Hispanus, Johannes Teutonicus and Tancred.[9] But in 1935 Gillmann published a critical study of an *Apparatus* which he identified as that of Laurentius himself.[10] Basing his work on one *MS.*, at Bamberg, *Can. 19* (= *A*), Gillmann identified glosses as the property of Laurentius, partly by noting later additions which attributed some of the glosses to *la.* or *laur.* (Laurentius), partly by comparing the contents of glosses with glosses assigned to Laurentius in the later *Apparatus* by Tancred, and partly by assuming that most of the unidentifiable glosses were therefore by Laurentius, who, however, did include a few glosses by Silvester and Johannes Galensis.

Now, some *Apparatuses* are easily to be identified by introductory remarks made by the compilers, for example, those of Vincentius and Tancred. But how can an *Apparatus* be identified as one decretalist's work when it is lacking in specific external and internal evidence? It is my purpose to approach this question by studying Gillmann's method in handling the so-called Laurentius-*Apparatus* to *Compilatio III.* Gillmann studied only one *MS., A,* and the *Apparatus* constitutes *Set II* among the three sets of glosses to *Comp. III* in this *MS.* (*Set I* is a series of brief, parallel references; *Set III* is the *Apparatus* of Tancred). But there are at least four other

[8] These glosses were attributed to Laur. by Tancred in his *Apparatus* to *Comp. III;* Schulte, *Quellen,* I, 191, and "Compp. Antt.", *SBW.,* LXVI, 128-131.

[9] Kuttner, *Repertorium,* I, 355-9; Gillmann, "Johannes Galensis als Glossator, insbesondere der Compilatio III," *AKKR,* CV (1925), 488-565; idem, "Magister Silvester als Glossator," *AKKR,* CVI (1926), 149-55, and CXII (1932), 99-110.

[10] *Des Laurentius Hispanus Apparat zur Compilatio III* (cited henceforth as *Laur. Appar.*), Gillmann also, "Lanfrankus oder Laurentius," *AKKR,* CIX (1929), 223-74, and CX (1930), 157-82.

Still more recently he has claimed the discovery of an *Apparatus* compiled by Johannes Galensis: "Des Johannes Galensis Apparat," *AKKR,* CXVIII, 174-222; also his earlier study, "Johannes Galensis als Glossator," *AKKR,* CV, 488-565.

MSS. in existence which offer the glosses of *Set II*: two at Paris, Bibliothèque Nationale, *MSS. Lat. 15398* (= *Par.*) and *3932*,[11] and one in Cassel, *MS. Jur. 11* (= *Ca*),[12] and one in Poland.[13] Of these, I have examined carefully *A*, fols. 116-222, and *Par.*, fols. 106-202^{v}, which, because it contains *only* the Laurentius-*Apparatus* and because it seems to be earlier than *A*, offers a good basis of comparison with the glosses in *A*.[14] In fact, in *Par.* the glosses are generally more correctly copied than in *A*, and are therefore one means of approaching the problem of the *Apparatus* in *A*. By this means of collating, then, and by occasional reference to Vincentius' *Apparatus*

[11] Kuttner, *Repertorium*, I, 356.

[12] Gillmann himself in 1937 noticed this, *AKKR*, CXVII (1937), 436 ff.

[13] A. Vetulani, "Projet d'un catalogue des mss. juridiques . . . dans les Bibliothèques Polonaises," in *Collectanea Theologica*, XVIII (1937), 436-51. I am indebted to Prof. Kuttner for this reference.

[14] Unfortunately I have copies only of *Par.*, and *A*, hence cannot collate them with the other *MSS*—which of course ought to be done.

Par. formerly belonged to the Library of the College of the Sorbonne; it was willed along with other books to the College by Gérard d'Abbeville, October 19, 1271; *Chartularium Universitatis Parisiensis*, ed. H. Denifle and E. Chatelain, I (Paris, 1889), no. 436; L. Delisle, *Le cabinet des manuscrits de la Bibliothèque Nationale* (Paris, 1868-81), II, 149, and III, 69f. The script, which of course must be later than 1210 and earlier than 1271, is apparently the script of Bologna of the first half of the century, with a tendency to the rounding of certain letters which leads to the later *rotonda* or *littera bononiensis*. I would venture to date the *MS.* about 1215 because of the early type of *Apparatus* to *Comp. III* it presents as well as because of the script. *A*, with a later *Appar.*, which consists not only of the older set of glosses but also of the *Appar.* of Tancred, was copied later in the century, as the script clearly shows. *Par.* is divided into two parts: the first (fols. 1-202) contains the first three *Compilationes Antiquae*, of which *Comp. III* and its *Appar.* in the script described above, the second part (fols. 204-289) contains *Comp. I* and *II* (cf. *Chartularium*, I, Introd., no. 15, n. 2).

Par. has been used frequently by myself, but by no one else, so far as I know, since Denifle referred to it in *Chartularium* I, Introd., no. 15; but Denifle did not study the *Appar.* to *Comp. III*. Only quite recently has anyone else observed the importance of this *MS.* for the *Appar.* in question—Stephan Kuttner himself, *Repertorium*, I, 356, 363. Kuttner, p. 363, says that the *Appar.* in *MS. Lat. 15398* to *Comp. III* has hitherto been unknown; but he has overlooked my own use of the *MS.* in the article, "Parisian Masters as a Corporation," *Speculum*, IX (1934), 427 n. 1, 428 n. 1.

in Bamberg *MS. Can. 20* (= *B*), it is possible to test Gillmann's method and conclusions.

In the first section of his work, Gillmann shows how the glosses of *Set II* in *A* occasionally refer by special signs to the glosses of parallel references in *Set I*,[15] which therefore must be earlier than *Set II*. In *Par.*, however, the references of *Set I* in *A* are sometimes incorporated in the glosses of *Set II*.[16] If separation is also frequent in *Par.*, one may nonetheless conjecture that these glosses of *Set I* in *A* containing bare references and the glosses of *Set II* form one *Apparatus*.[17] At any rate, all the glosses in *Par.*, whether of *Set I* or *II*, are in the same hand.

Far more important than the question of *Sets I* and *II* is that of the authorship of the glosses of *Set II* in *A*. In prov-

[15] *Laur. Appar.*, pp. 1-7.

[16] For example, gl. ad *Comp. III*, t. de bigamis non ord. (I, 14), c. Nuper (1), v. licet *in veritate*: "§ No.(ta) in maleficiis . . . non exitum, ut ff. ad l. cor . . . c. uno, de p.d. i. si quis cum telo;" *Par.*, fol. 124^{v} c. 1. But the gl. in *A*, fol. 138^{v} c. 1. is divided, the first part being ad v. *quantum in ipsis*, and referring by a special sign to the second part, "ut ff. ad l. cor. . . . c. uno;" *Laur. Appar.*, p. 2. Note that in *Par.*, furthermore, there is a reference lacking in *A*.

Gillmann, p. 2, n. 5, gives the corresponding gl. by Laurentius in *Set III* of *A;* Laurentius expresses the same idea, but omits one of the references in the gl. in *Par.* Hence no proof here that Laur. was the author of the gl. in *Par.* and *Set II* of *A*.

Other examples of combining in *Par.* where division exists in *A* are the following: gl. ad *Comp. III*, t. de praescriptionibus (II, 17) c. cum non liceat (2), v. *temporis* (*Par.*, fol. 146^{v} c. 2; *Laur. Appar.*, pp. 3 f.); gl., t. de haereticis (V, 4), c. Vergentis (1), v. *infamis* (*Par.*, fol. 189, c. 2; *Laur. Appar.* p. 6). Still more examples could be cited.

[17] In *Par.* the use of the special signs referring to the glosses of parallel citations seems often to be simply the means employed to refer to an additional opinion or list of references to the same or different words in the decretals, sometimes because the space in the margin opposite the key-word in the decretal is insufficient for both glosses, sometimes because the two glosses refer to separate words (in *Par.* the so-called earlier gloss usually is to a sign that appears over the key-word in the decretal), and, it may be, often because the authors were different. Sometimes, finally, glosses to the same key-word may be separated simply because the copyist found more space for a lengthy gloss at the top or bottom of the page rather than in the margin opposite the key-word.

ing that Laurentius was the author of the majority of them and therefore the compiler of the *Apparatus,* Gillmann first tries to show that "einzelne Glossen dieser Schicht schon ursprünglich eine Sigle des Laurentius Hispanus tragen".[18] If this is true in *A,* it must be emphasized that in *Par.* no identifying *sigla* accompany the glosses; further, that this is possibly an indication that the *sigla* in *A* are later than the *Apparatus,* i. e., the work of someone who later tried to identify the glosses and assign them to their proper authors. Indeed, as for the four glosses in *A* which, Gillmann thinks, were originally identified as Laurentius', one of them shows evidence from *Par.* that the *la.-siglum* in *A* is later and may indicate only that Laurentius added a reference to a gloss of which he was not the author.[19] Moreover, one gloss ends with an "l", which is not the *siglum* for Laurentius, as Gillmann says, but is the Roman numeral for *quinquaginta* in a law cited from Justinian's *Code!*[20] The third gloss in this group has the *siglum, la.* in *A,* but the gloss does not appear at all in *Par.*; in *A* (fol. 204v c. 3), actually, it is in the later hand of the glosses of *Set III,* the *Apparatus* of Tancred.[21] Thus it has no bearing on the ascription of *Set II* to Laurentius. In fact, only one of this group of four glosses is attributed to Laurentius in *A*—and not too surely.[22]

[18] *Laur. Appar.* p. 7.

[19] Gl. ad *Comp. III.,* t. de foro competenti (II, 2), c. Licet (1), v. *provida* (*Laur. Appar.,* p. 8); in *Par.,* fol. 132 c. 2, is lacking the final part of the gl.: ". . . et I. de acusat. Qualiter et quando. *la.*" Numerous examples of this will be given below.

[20] Gl. ad *Comp. III,* t. de frigidis et maleficiatis (IV, 11), c. Fraternitatis (un.), v. *qui seras*: "§ Innuitur hic . . . C. de veteri iu. enu. l. I. § Set his l;" *Par.,* fol. 182 c. 1; *Laur. Appar.,* p. 8. The reference is to C. 1, 17, 1 § 5 (not 4, as Gillmann has it): "Cumque haec materia . . ., *sed his quinquaginta libris* totum ius antiquum . . . servanda, quia non omnes in omnia sed certi per certa vel meliores vel deteriores inveniuntur" (these words are almost literally cited in the body of the gloss).

[21] Gl. ad. t. de accusationibus (V, 1), c. Veniens (2), v. *excusarent; Laur. Appar.,* p. 8.

[22] *Laur. Appar.,* pp. 7 f. The *siglum* '*b*' is in *A* attached to the gl. ad *Comp. III,* de rescriptis (I, 2), c. Sedes apostolica (4), v. *minores.* Gillmann asserts (p. 8, n. 1) that '*b*' is an error of the copyist, because in the Toulouse *MS* (Cod. Tolos. 368, fol. 121 c. 2) '*l*' rightly appears.

Next Gillmann lists numerous glosses of *Set II* in *A* to which the Laurentius-*siglum* (*la.* or *laur.*) was added by a later hand, and of course concludes that all of them were originally by Laurentius.[23] But while some of these no doubt are Laurentius', a few of them do not occur in *Par.*—an indication that these possibly do not belong to the *Apparatus* in question.[24] More significant is the frequency of *Set II*-glosses in *A* in which there are additional references or opinions with the *siglum, la.,* which do not exist in the *Par.* versions. A few examples of the additions in a later hand in *A* will show clearly how doubtful the original authorship of the earlier glosses is. Indeed, my collations reveal how Gillmann himself could be mistaken in what he attributed to a later hand in *A*—often not merely *laur.* is added, but a considerable part of the gloss preceding the *siglum* is later than the gloss belonging to the *Apparatus* of *Set II*.[25] Thus it seems that

[23] *Laur. Appar.,* pp. 8-19.

[24] Gl. ad t. de translatione episcopi (I, 5), c. Inter corporalia (2), v. *querere non debebat; Laur. Appar.,* p. 8; *A,* fol. 124^{v} c. 1. But no definite conclusion can be drawn without our knowing whether the other *MSS.* besides *Par.* with only the *Appar.* of *Set II* omit such glosses. Other examples: gl. ad t. ut lite non contestata (II, 3), c. Tue fraternitatis (3), v. *idem in possessionem* (*Laur. Appar.,* p. 10); but in *Par.,* fol. 134 c. 1, and *A.,* fol. 149 c. 2, there is a quite different gl. ad v. *possessionem*: "§ Hec missio . . . reclamabat" which gl. belongs to the *Apparatus,* not the Laur.-gl. Also the gl. ad t. ut lite non cont. (II, 3), c. Quoniam (5), v. *opponi* (*Laur. Appar.,* p. 10), *deest* in *Par.* Further, there are several glosses in *Par.* that I could not find in *A,* and a few of these exist also in *Ca,* as Gillmann himself has observed (*Archiv,* CXVII, 439 f.): gl. ad t. de rescriptis (I, 2), c. Olim tibi (6), vv. *principalia, intellectum,* and *malitiosam;* c. Cum adeo (7) vv. *scripta* and *ex certa* scientia (*Par.,* fol. 107^{v} c. 1; *Ca, Codex iur. 11,* of Kassel, cited by Gillmann). But a thorough collation of all the MSS. is needed to draw conclusions from omissions in some, and inclusions in others.

[25] The additions in a later hand in *A,* lacking in *Par.,* are given in italics—all references to decretals in *Compilatio III*:

Gl. ad t. de fide instrumentorum (II, 13), c. Inter dilectos (1), v. *procuratore*: "§ Ex hoc argue . . . hoc nichil minus. *Vel etiam . . . vel procuratore. la.*" (*Par.* fol. 142 c. 2; *A,* fol. 158^{v} c. 3; *Laur. Appar.,* p. 10).

T. de iureiurando (II, 15), c. Etsi Christus (13), v. *indulgemus*: "§ Id est . . . super *prudentia, S. de testibus. Tuis. la.*" (*Par.,* 146 c. 2; *A,* 163 c. 1; *Laur. Appar.,* p. 10).

Laurentius, either while compiling his own *Apparatus,* or while lecturing, used the older *Apparatus* of *Set II* and made corrections and additions. This is the more probable because other decretalists used the work of their colleagues or predecessors in like fashion—so Tancred himself.[26]

Besides these later Laurentius-additions to the glosses in *Set II,* there are many glosses of the *Apparatus* (*Set II* in *A*) which resemble, in wording and in thought, glosses attributed to Laurentius in the Tancred-*Apparatus* (*Set III*). Gillmann, naturally, has drawn the conclusion that both the earlier and the later glosses were originally by Laurentius,[27] that the

T. de sententciis et re iud. (II, 18), c. Cum illius (1), v. *iure dotalicii*: "§ Id est . . . 1. ul't. *Et huiusmodi . . . et arg. hic. la.*" (*Par.,* 148 c. 1; *A,* 164^{v} c. 3; *Laur. Appar.,* p. 10).

T. de sent. et re. iud. (II, 18), c. Ranucius (13), v. *residui*: "§ Excipiuntur . . . R. I. *Set et acciones . . . peccuniam. la.*" (*Par.,* 151 c. 1; *A,* 168 c. 1; *Laur. Appar.,* p. 11).

T. de prebendis et dignitatibus (III, 5), c. Cum iamdudum (5), v. *avaricie*: "§ Que a promotione . . . Si quis suo . . . *Arg. S. e. t. avaricie. l.* ' *I. la.*" (*Par.,* 156 c. 1; *A,* 173^{v} c. 1; *Laur. Appar.,* p. 12).

T. de statu monachorum (III, 27), c. Cum ad monasterium (2), v. *nec recipiatur*: "§ Set mittatur . . . rapuerit, *et XVI. Q. VI . . . la.*" (*Par.,* 171 c. 2; *A,* 190 c. 1; *Laur. Appar.,* p. 14).

T. de celebratione missarum (III, 33), c. *Cum Marthe* (5), vv. *physici* contrarium *asseverent*: "§ Qui dicunt . . . posse fieri. *Postquam iam quelibet pars . . .* § *Cum quis. la*". (*Par.,* 174^{v} c. 1, v. *asseverent; A,* 193 c. 2; *Laur. Appar.,* p. 14; *Archiv,* CV, 548).

In this example more belongs to the later addition by Laur. than Gillmann observed in *A*: gl. ad t. de temporibus ordin. (I, 9), c. Quod translationem (3), v. *latinorum*: "§ Et ita latinorum . . . 'Cum fueris rome' etc. *et sic continere . . . Illa* (*c. 11*). *Lau. Et. S. e. c. I. . . . t.*" (*Par.,* 122^{v} c. 2; *A,* 136^{v} c. 1; *Laur. Appar.,* p. 9—where Gillmann says that only "lau . . . t." is in a later hand).

Many other examples of these later additions could be given here, but economy of space forbids.

[26] In his own *Apparatus* Tancred sometimes adds his opinions and references to the earlier glosses, or to Laurentius' additions to the earlier glosses; gl. to t. de renunciatione (I, 8), c. Nisi cum pridem (8), v. *distinguendum*: "§ Prout gregorius . . . scandalizaverat. *Veritas ergo . . . quandoque l.* § *Tunc . . . Plurimos. t.*" (*Par.,* 120^{v} c. 2; *A,* 134 c. 2; *Laur. Appar.,* p. 9). Also to t. de temporibus ordin. (I, 9), c. Quod translationem (3), v. *latinorum,* see above, n. 25.

[27] *Laur Appar.,* pp. 20-57.

earlier represent, so to speak, the first edition, the later a revision or new *Apparatus* by Laurentius. Several difficulties, however, are here apparent. In the first place, plagiarism was by no means unethical in the early thirteenth century, and consequently even a literal reproduction of a gloss is by itself no guarantee of common authorship. If Tancred made a conscientious effort, in his formal *Apparatus* to *Compilatio III,* to give the author of each gloss, there is no evidence that Laurentius did likewise.[28] Furthermore, when the wording of glosses is not identical but the same opinion is expressed in them, one can only say that different decretalists often expressed like opinions on a particular subject. It is also important above all to note that Laurentius-glosses in Tancred's *Apparatus* often refer to sources that differ from those referred to in the earlier glosses; sometimes, indeed, important terms are not repeated. Finally, opinions may be in conflict. Among the many examples that could be offered, the first illustrates similarity of opinion and diversity of references to sources—to *Comp. III,* t. de rescriptis (I, 2), c. Sedes apostolica (4):

Laurentius in Tancred's *Appar.,* ad. v. *multitudinem*:[29] "§ Arg. occasionem iuris non esse trahendam ad iniquum conpendium, arg. X. Q. III. c. ul't. et C. de usuc. pro enp. l. ul't. . . . Set videtur, quod cum generalitate non debeat aliqua commissio impetrari, arg. S. e. t. ad hoc l'. II. Set ideo non valent ille littere, quia certi iudices non erant ibi dati, set quos ipse post eligeret. Alias generalitas causarum omnium etiam delegari potest, ff. de iudic. Cum pretor . . . *la.*"

Set II, ad v. *abutuntur*:[30] "§ Et ideo ea privandi, xi. Q. iij. privil'.; non enim trahere debent ad iniquum compendium iuris accionem (!); (*A, occasionem*), C. de usuc. pro. emp. l. ult.;" ad v. *multitudinem*: "§ Quod prohibetur hic, et ff. de testibus l. i. et I. de testi. cum causam. Multitudo enim honerosa nil habet honesti, Aut. de referendariis, in prin. coll. ij. Item habes ex hoc capitulo (*A, item heres sine iusto titulo*), quod valet procommissio (*A, commissio*) generalis, licet in petitione non simpliciter verum, *ut no.*(*tavi*) S. c. prox. Sed

[28] It has been said of Vincentius Hispanus that he borrowed freely without giving credit (Gillmann, *AKKR, CV,* 531, n. 3), and that is true; but, as my present study will show, Laurentius may have done the same. The *Apparatus* of Johannes Teutonicus *to Comp. III,* is also careless in giving the sources of many of the glosses used.

videtur contra, extra. ij. e. t. ad hoc. Sed ibi iudices erant incerti, hic cause; nam generaliter cause committi possunt, ut hic, et ff. de iudiciis. cum pretor; licet alias iussus generalis non suffitiat, ut ff. de acquiren. here. Si quis heres bona. § Iussum."

The second example is that of an earlier gloss giving more references, with a lengthier discussion, than the Laurentius gloss in Tancred's *Apparatus*, ad t. de postulando (I, 4), c. Ad hec (1), vv. *editur ac publice promulgatur*: [31]

Laur., ad v. *editur*: "§ Ut bene legitur in Aut. ut facte no. consti. circa prin. coll'. V, ubi dicitur quod post duos menses nullus habet excusationem, si velit allegare ignorantiam, *la;*" *A*, fol. 121ᵛ c. 1.

Set II, ad v. *promulgatur*: "§ Iure tamen civili infra duos menses videtur excusari posse; ex tunc enim vult imperator suam valere legem, ut Aut. nove const. coll'. v. § I. Quod. verum est nisi constaret eum ante scire. Sed post ei incumbet probatio, si velit ignorantiam allegare; sed infra duos menses presumatur ignorans nisi probetur sciens. Tunc enim non decurreretur ad coniecturas, ut ff. de ver. o. continuus (D. 45, 1, 137); alias presumatur ignorantia, nisi probetur scientia, ut S. no.(tavi), et ff. de admi. tu.[32] hoc autem (D. 26, 7, 6); et facit ad hoc di. lxxxij. proposuisti"; *Par.*, fol. 110 c. 1; *A*, l. c.

[29] *A*, fol. 118 c. 2; *Laur. Appar.*, p. 20.

[30] *Par.*, fol. 107 c. 2; *A*, 118 c. 2; *Laur. Appar.*, p. 20.

[31] Gillmann does not give these glosses.

[32] The reference is to the gloss of *Set II* ad v. *noticiam* (*A*, 121ᵛ c. 1; *Par.*, 110 c. 1): "§ Hec allegatio prima facie bona erat, ut ff. de decre. ab ordi. fa. l. ult., ff. de probat. verius; et no.(ta) S. de rescriptis, super litteris. Sed eliditur per facti et iuris (*A*, *iure*) allegationem, ut infra sequitur; iuris, ubi dicit, 'Cum cardinalis idem, etc.,' facti, ubi dicit, 'Sed in delinquendo, etc.,' et ubi dicit, 'Idem quoque, etc.'" Now on the subject of ignorance Laur. has one gloss attributed to him by Tan. in *A*, but Tan. has two glosses, ad. v. *allegans* and *observari*, where he uses some of the references found in the two older glosses, and his opinion is similar. Following G.'s method, one should conclude that three different persons—the author of the gloss in *Set II*, Laur., and Tan.—wrote separate glosses on the same subject.

Sometimes not only Laurentius but also Johannes Galensis, Vincentius, and even others write glosses that bear opinions and references similar to those in glosses of *Set II* in *Par.* and in *A*. In this instance, Johannes Galensis is probably the author of a gloss in *Set II* which resembles glosses by Laurentius, Vincentius, Tancred, and Johannes Teutonicus, to t. de electione (I, 6), c. Venerabilem (19), v. *favere*:

(*A*, 132 c. 1), Tan., citing Joh.: "§ Ergo si favet non debet esse iudex, ut xi. Q. iii. quattuor, et c. sequenti. Sed dic, quod in dubio potest favere cui vult, ff. de l. ii. si quis servum § Si inter duos, et S. de patro. c. i., et ff. de bonis auc. iudi. pos. In venditione § ult., et ff. ad similit. si quis § Si cum amb. Vel potest partes cogere ad concordiam, I.(nst.). de satisdat. tu. Sciendum autem. *Jo.* Ego credo, quod nulli parti debet favere, nisi cum merita electorum et eligentium paria sunt, ar. S. de iur. patro. quoniam in quibusdam, lxiii. si forte. *t;*" (*A*, l. c.). Ad v. *advocato, Laur.*:[34] "§ Advocatus ecclesie non est patronus, set conparatur illi tutori, qui datur pupillo, ut defendat illum ab infestatione aliorum, et appellatur honorarius, ut ff. de sol. Quod si forte . . . nec conputatur talis tutela in numero trium tutelarum, set est causa honoris tantum, ff. de ritu n. Si quis tutor . . . *la.*" Ad v. *defensore*: "Nam de (!) teutonicis concessum est regimen ecclesie romane, ut S. de con. di. V. In die resurreccionis (c. 15), et romana eccelsia transtulit imperium ab oriente ad occidentem . . . *lau.*"[36]

(*A*, l. c.; *Par.* 119 c. 2) Ad v. *favere*: "§ Favere enim potest cui vult, ut ff. ii. de leg. si quis servum § Si inter duos (D. 31, 8 § 3), et ff. de bo. auc. in possi. In venditione, in fi. (C. 7, 72, 10 § 3), ff. qui satisda. co. R. i. (D. 2, 8, 17); favorem tamen debet impendere ei qui maioribus uniatur meritis et studiis, ut extra. de. iure pa. quoniam (c. 4 *I*, 3, 33, c. 3 X 3, 38), et S. lxiij. di. c. ult. (c. 36). Theutonicis[33] enim concessum est regimen, id est regiminis ecclesie romane defensionem, ut de con. di. v. in die (c. 15); et hoc est quod hic dicit advocare (*A*, advocato) etc. Advocatus talis defensor intelligitur, non patronus. Sed similis est ei tutori, qui datur tantum gratia honoris, non autem gerat, cum scilicet aliquis potens datur alicui tutor propter eius potentiam, non vexetur, et appellatur honorarius a le.(ge), et ff. de sol. quod si forte § sunt quidam, et ff. de ritu. nup. Si quis tu."[35]

[33] In *A* a later hand was inserted a sign before "Theutonicis" which refers the reader ad v. *vel non potuerint* (. . . ap. se. *advocato et defensore*). Ad vv. *advocato* and *defensore* are two glosses by Laur. which G. relates with this second part of the older gloss. In *Par.*, there is no sign indicating a division of the gloss.

[34] Published by G., *Laur. Appar.*, p. 28 f.; Schulte, *SBW*, LXI, 131.

Still another example shows how two or three decretalists might write on the same word in similar fashion:

Ad e. c. Venerabilem, I, 6 v. *exacuit furorem*: "§ Tenetur enim, qui alium inflammat ad malum, ut S. de homicidio. Sicut § Illi vero (§ 3), ff. ad l. aquil'. Si obstetrix (D. 9, 2, 9) R. I. *lau;*" *A*, 132v c. 1, *Laur. Appar.*, p. 29. Ad e. v., Vincentius (?): "§ Tenetur enim qui per alium inflamat, S. de homicidio sicut. l'. i. § illi vero, ff. ad. l. acquil. si obstetrix. i. R.;" *B*, 110v c. 1.[37] (*A*, 132v c. 3; *Par.* 119v c. 1) Ad e. v.: "§ Tenetur enim et qui alium concitat iniuriarum, ut ff. de iniur. Item apud. § fecisse, et de dampno dato, ff. ad l. aquil. Item si obstetrix. j., et ar. extra. de homicidio. Sicut. § illi qui."

That Laurentius was definitely not the author of the following gloss in *Set II* is shown clearly by a gloss in Tancred's *Apparatus;* the Tancred gloss refers both to 'quidam' and to

[35] G., p. 29, publishes only the second part of the gloss, "Theutonicis enim . . . Si quis tu."

[36] Vinc. himself has a gloss ad. v. *advocato* which embodies the gloss of Laur. and also the corresponding part of the older gloss (*B*, 110v c. 1; "§ Advocatus ecclesie non est patronus, set apertissime comparatur illi tutori, qui datur tantum gratia honoris, non autem ut gerat, cum scilicet aliquis potens datur alicui pupillo ut propter eius potentiam abstineat quis a vexatione pupilli. Talis tutor in lege appellatur honorarius, ff. de sol. quod si forte. Nec computatur talis tutela in numero trium, set est causa honoris tantum, ff. de ritu nup. si quis tutor." Joh. Teut. later wrote a longer gloss on the transference of the Empire to the Germans, and expressed the same thought. Schulte, *SBW*, LXI, 130 f.

But I think it may be claimed that Joh. Galensis wrote the whole earlier gloss. In *Par.* there is no division of the gloss into two parts, while in *A* a later hand has put in a sign pointing to the words in the decretal on which the second part of the gloss could be used as a discussion. Moreover, Tan. attributes the first part, "§ Favere enim . . . S. lxiij. di. c. ult.," to *Jo.* Now this *Jo.* is perhaps Joh. Gal., since there is no evidence that John Teut. wrote any of the glosses in this early *Appar.* (I have not found this part of the gloss in Joh. Teut.'s *Appar.* in *MS. Royal 11 C. VII* of the Brit. Museum). Thus it may be maintained that Joh. Gal., not Laur., was the author of the gloss in *Set. II.*

[37] Here it is probable that Vinc. used Laur., and Laur. used the earlier gloss in *Set II.* If Laur. was the author of both, and in the later gloss revised the earlier, why does he do so in different language and why does he omit a reference ("ff. de iniur. Item apud. § fecisse" = D. 47, 10, 15 § 8) found in the earlier gloss?

Laurentius, but the words of 'quidam', not of Laurentius, correspond with words in the earlier gloss:

Tancred-gloss, ad t. de temporibus ord. (I, 9), c. Tuam (7), v. *respectum* (ad petitionem illicitam): "§ Nota, quod eligitur vel ordinatur aliquis, intervenientibus suis precibus, indistincte. Dicunt *quidam,* quod illicite sint, et continent speciem symonie, ut i. Q. i. ordinationes, ar. viii. q. i. in scripturis . . . Quod *ego* concedo, si indignus est. Si vero aliquis, cum dignus sit, preces pro se porrigat superiori, non credo hoc illicitum esse . . . ubi est expressum, quod quis possit pro se erogare, j. de sy. tua. l'. e., alias multi hodie dampnarentur, *et hoc idem sententiavit lau.* Si autem quis preces offerat canonicis vel electoribus pro se ut eligatur in prelatum, illicite sunt et ambitiose . . . Si vero precibus alienis promovetur vel ordinatur, aut preces ille sunt carnales aut spirituales; si sunt carnales, et fiant pro indigno, symonia committitur . . ., quia succedunt loco precii . . . si vero sunt carnales et fiant pro digno, dummodo elector vel ordinator non habeat respectum ad preces, sed ad meritum eligendi vel ordinandi, licite possunt admitti; nec committitur symonia, ut hic, i.Q.i. quibusdam. Si autem spirituales sunt, admitti possunt, nec faciunt symoniam, ut i.Q. i. latorem;" *A,* fol. 137 c. 1.

Note that Laur. has nothing on *preces,* while *quidam* say that *preces* in these circumstances are a kind of simony (cf. the gloss in *Set II*); but Laur. does paraphrase the earlier gloss on the subject of the abbot.

Set II-gloss, ad v. *illicitam* in *A,* 137 c. 1, but ad t. de scrutinio (I, 10), c. Ex parte (un.), v. *indignum,* in *Par.,* fol. 123^{v} c. 1: "§ Cum enim esset indignus, preces pro eo porrecte redolent symoniam, i. Q. i. quibusdam, et no. (ta) hic licite concedi quod illicite petitur, ut ff. de orig. iur. l. ii, xviii. di. de eulogiis. Item notabis hic abbatem esse in minoribus ordinibus, et sub-diaconus, ut l. di. accedens, et infamis etiam potest gerere curam et sollici(tudinem, *A*), ut in iam dicto c. Accedens. Infamis enim non excusatur ab honeribus ut. C. de hiis qui inple. stipe. sacra. sunt libera. l. i. Nam potius videtur nomen abbatis sollicitudinis quam honoris, ut xviij. Q. ij. hoc tantum, licet sit ar. contra. extra. de eta. et quali. ut abbates, j. de cor. vici. c. ij."

(*A,* 137 c. 1) Laur., ad v. *ascendat*: "§ Forte erat irregularis et ita potest quis esse abbas in minoribus ordinibus. Nam et diaconus potest, arg. di. L. Accedens (c. 10). Immo et infamis curam monasterii gerere potest, ut ibidem arg. Infamis enim a civilibus muneribus non excluditur, ut c. l'X. de his qui (non) inpletis stipendiis sacramento liberati sunt (*C.* 10, 55, 54) l. I. Nomen enim abbatis pocius est sollicitudinis quam ordinis vel honoris . . . *lau;*" (*A,* l. c.; *Laur. Appar.,* p. 33 f.).

Other glosses [38] in *Set II* make one doubt that Laurentius revised an earlier *Apparatus* of his own and issued it as a 'new

[38] Gillmann gives only a fragment of one of them, p. 104.

edition'—ad t. de in integrum rest. (I, 24), c. Auditis (2), vv. fungitur *vice minoris . . . restituimus*:

(*A*, 145 c. 1-3; *Par.* 130^{v} c. 1) ad v. *vice* minoris: [39]

"§ Restituitur hic minor, ut inducat probationes omissas, sicut alias propter allegationem omissam, ut ff. de mino. minor. xxv. annis, C. sententiam rescin. non pos. l. ii. Item si potuit provocare et non provocavit, restituitur ad appellationem, ut ff. de mino. et si sine § Item sine. Item restituitur etiam si contumax sit condempnatus, ut ff. de mino. minor. Item restituitur contra confessionem factam in iuditio, ut ff. de confessis certum § minorem; et contra negationem, ff. de mino. si ex causa § nunc videndum. Item restituitur contra compromissum factum in iudicem, ut ff. de mino. si minor. § minores. Item restituitur contra venditionem factam, si extet qui plus donet, ff. de mino. et si sine § quesitum; in quo casu non restituerem cum pro satis(datione) minima re, ar. C. de rei ven. si voluntate, et ff. de rest. Scio., ff. de mino. in cen.(?) ii. § Idem pomponius, ff. de contra. emp. res bona. Dicerem tamen (*A*, cum) per actionem ex illo contractam posse consequi, in quo lesus est; maxime, si dolus adversarii intervenerit, ff. de act. emp. iul. § Idem et si. Item subvenitur minori in lucro, ut ff. de mino. l. ait pretor § hodie; quod verum est ubi lucrum provenit ex favore, secus si odio (*Par.*, hodio) ut ff. de usur. cum quidam § Si pupillo. Item restituitur minor si accepto tulit, ut ff. de muneri. patri.

(*A*, 145 c. 1-3; *Par.* 130^{v} c. 2) ad v. vice *minoris*:

"§ Quod probatur iure civili, nam res publica utitur vice minoris, ut C. ex quibus causis ma. matrimonium re. res publica. Sed ecclesia comparatur rei publice, ut C. de secro. s. ec. ut inter divinum; et dicitur habere tutorem vel curatorem, Aut. de ecclesiasti. ti. § ult. coll. ix. Immo videtur, quod econtra fungatur vice pupille, sicut fungitur res publica, ut C. de rei pu. rem publicam. Quod tamen non est verum, nam hoc dato non concurreret contra eam (*A*, non curreret prescriptio contra eam), sicut non (*A* nec) currit contra pupillum, ut C. de prescrip. xxx. an sicut. Sed servis civilibus contra sententiam non potest restitui nisi usque ad triennium nisi prevaricatio [40] vel fraus manifesta arguatur, ut C. de sententiis adversus fiscum. l. i. vel x., licet Aut. dicit iustinianus sacerdotium et imperium non multum differunt ab alterutro, vel sacre res accionibus. ut in Aut. de non alienan. aut. permutan. § utique cum nec. coll. i. No.(ta) tamen, quod ecclesia per ius civile non comparatur rei publice, secundum quod proprie dicitur, id est, res romanorum, ut ff. de ver. sig. eum qui; sed prout dicitur res publica, dicitur aliarum civitatum, ut C. de servis fu. l. v.; et patet ex illa l. C. de sacro ec. ut inter, circa medium. *Sed numquid restituitur* ecclesia in prescriptione? *Dicit Jo., Az.*,[41] *eo minorem*

[39] In *Par.* this gloss is wrongly referred to t. de in integrum rest. (I, 24), c. Cum Venissent (1), v. *promiserit*.

[40] *A*, ". . . nisi usque ad prevaricatio. . . ."

[41] Johannes Bassianus and Azo.

§penult. Sed no.(ta), quod non eo ipso, quod minor restituendus est, sed si probat se lesum, ut C. de in integrum re. mino. minoribus, et ff. de iure iuran. nam postea. Si minor. *In mutuo autem presumitur ecclesia lesa, nisi probetur locupletior,* ut C. si adversus cre. l. i., S. x. Q. ii. hoc ius, ver. 'et si creditor'. Item non restituitur ecclesia iure accionis, sed iudicis offitio, ff. de mino. quod si minor. § ult. Item restitutio non impetratur nisi per procuratorem specialiter ad hoc datum, ut ff. e. illud. § Si talis, et l. sequenti. Item non restituitur ecclesia propter dampnum fato accidens, ut C. de in int. re. mi. l. penult., et ff. e. verum. § Sciendum. Item iudex delegatus, si incidit questio in in(tegrum) restitutione, poterit restituere, ut C. ubi et ap. quem cogni. in int. re. l. ult." *esse restituendum,* ut ff. de mino. l. eum (*A,* ei), et l. et si sine. § Item sine, C. si adversus usuc. l. una. Sed Al., Az. (Albericus and Placentinus) dicunt contra, ut. C. quibus causis non est necessaria in int. re., l. ult., C. de prescrip. xxx. an sicut iuditium, Aut. in int. re. infra quadriennium, et incipi et terminari debet, ut C. de temporibus in int. resti. ea que l. ult.; *ultra autem non potest procedere nisi in duobus casibus,*[42] ut C. e. petende, et ff. de mino. intra utile. Post quadriennium etiam ex iusta causa restituenda videtur ecclesia C. de temp. et re. ap. l. ult. illud; iiii. Q. v. c. 1."

The Laurentius-gloss, ad v. *restituimus,* is much briefer than these and is in quite different wording.[43] The earlier glosses were probably used by Vincentius, who wrote a short one, ad e. t., e. c. Auditis, v. *minoris* (*A,* 145^{v} c. 1; *B,* 120 c. 3) and a long one ad v. *restituimus* (*B,* 120 c. 1-3). So far as I know Vincentius' glosses on this point are unpublished; hence I present them here:

(*B,* 120 c. 3; *A,* 145^{v} c. 1) ad v. *minoris*: "§ Non tamen pupilli, quia contra pupillarem etatem non currit prescriptio, C. de prescrip. xxx. an. sicut in rem. Set currit contra ecclesiam; fungitur ergo vice minoris, et ponitur vel constituitur in xxv. anno, et postulabit restitutionem usque ad quadriennium, C. de tem. in int. re. l. ult.; et etiam post quadriennium audietur *secundum quosdam,* si probaverit (*A,* probat) se illo quadriennio ex iusta causa prepeditam, iii. q. v. c. l, ff. de mino. ait pretor. § ult., et C. de temp. ap. l. ult. § illud. *Vin.;*" (*B,* deest *Vin.;* compare with the earlier gloss ad v. *minoris*).

[42] G., p. 104, n., publishes only this part of the gloss: ". . . set nunquid restituitur ecclesia in prescriptione . . . ultra autem non potest procedere (G. wrongly gives *procedi*) nisi in duobus casibus. . . ."

[43] Gillman overlooks it; *A,* 145^{v} c. 1: "§ Ecclesia ubicumque capitur, in iuditio restituitur, ut si contumax condempnata est . . . *la.*"

(*B*, 120 c 1-3) ad v. *restituimus*: "§ Inprimis videamus quid sit in int. (egrum) restituere, hoc est, reduci ad statum quo erat ante contractum vel sententiam vel eius quo lesus est; S. e. t. requisivit, ff. e. si ex causa iudicati (D. 4, 4, 9), C. de in int. re. postulata. ne quid novi fiat. l. i. Sequitur cui detur: dico quod minori xxv. an. et rei publice et ecclesie; et hoc si probat se lesam, ff. de iure iu. nam postea. § Si minor; alias non, liiii. di. generalis. In mutuis presumitur lesus nisi probetur locupletior, et hoc in odium creditorum, C. si adversus credi. l. i.; et fideiussori datur non sine causa cognitione, ff. e. in cause. Sequitur contra quem detur: dico quod contra illum cum quo contraxit, vel eius heredem; non contra tercium, ad quem res pervenit, nisi in subsidium si ille cum quo contraxit, non est solvendo, ff. e. in cause. § ult., et l. plane. Sequitur infra quod tempus detur: olim infra annum utilem, hodie infra quadriennium, C. de tem. in int. re. l. ult.; et ita intelligitur S. de transac. contingit. l. i. Sequitur quo iure postuletur: dico quod officio iudicis tantum, S. e. quod si minor. § i. Sequitur qualiter dari habeat: dico ut iam dicemus, I. e. cum ex litteris, quod utraque parte presente. Sequitur per quem debeat peti: per procuratorem specialem ad hoc, ff. e. illud; per prelatum, C. si tu. vel cura. interven. l. i. Sequitur quotiens sit facienda: dico quod ex quo denegata est restitutio et non fuit appellatum, restituitur ad appellandum, alias non datur postea, nisi propter novas defensiones, scilicet, si que de novo competant vel competierint ecclesie in priori causa, nec fuerunt exhibite, C. si sepius in int. re. post. l. ii. et iii. Sequitur quis potest restituere: ordinarius etiam contra sententiam suam, ff. e. prefectus et delegatus, C. ubi. et apud quos resti. cogni. pos. l. ult.; contra sententias autem delegatorum a papa, vel contra sententias pape, vel contra sententias bis iudicatas, solus papa restituit, ff. e. § i. minor au. § i.; et solus princeps criminis penam et infamiam maioribus et minoribus restituere potest indulgendo speciale privilegium in int.(egrum) R.(estitutione), ff. de postulando l. i. § de qua. Sequitur utrum contestatione litis perpetuetur: non, set clauditur tempore, ff. e. pampin. (!) in fi. Sequitur an executio debeat retardari postulata restitutione: dico quod sic, licet quandoque vidi papam ex aliqua forte latenti causa mandare executioni, forte ideo quia contra principis sententiam difficulter prestatur audientia; datur, tamen executio debet de iure retardari, C. de in int. re. pos. ne quid fiat. l. i., et hic. Sequitur in quo anno constituatur ecclesia: dico quod in xxv. an.(no), et qui in xxv. anno est minor est xxv. an., ff. e. denique minorem, et do ei quadriennium ad restitutionem, C. de tem. in int. re. l. ult. Sequitur in quibus casibus detur: dico quod datur si omissit instrumentum, vel aliquid quod debuerat allegare, ut hic, et ff. de mino. minor. § i., et lex Si in emptione. § i. l. vel si omisit aliquid non omittendum, ff. e. non omnia; et ad appellandum, ff. si. et si sine. § ult.; ubi autem restituitur ad appellandum, non cassantur acta; secus ubi restituitur contra sententiam, j(infra), c. penult.; et restituitur si detulit vel remisit iuramentum, ff. de iureiu. nam minor; et contra confessionem suam restituitur, ff. de confessis. l. certum. § In pupillo. Item contra arbitrium, ff. de mino. minor. § ult. Item restituitur in contractibus quandocumque leditur vel decipitur calliditate adversarii, vel sui facilitate, vel ratione eorum que amiserunt, vel eorum que non acquis(er)unt, vel quia honeri se subiecit, ff. e. quod si. § non semper, et

l. non omnia, et infra de rebus. ec. al. vel. non. ad nostram; vel quia accepto tulit alicui, S. e. patre. § penult. No.(ta) tamen, quod ubi episcopus cum capitulo alienat rem, dixit Y.[44] dominium est translatum, et solum beneficium in in(tegrum) re(stitutione) superest, S. de his que fi. ab episcopo sine con. c., c. iii. l. i. Alii dicunt quod si bene geritur negotium ecclesie, transfertur dominium, et necessarium est hoc auxilium; si vero in dampnum ecclesie actum est, non tenet contractus, nec habet locum hic auxilium, quia contractus non tenet, xii. q. ii sine excep., et C. de sacros. e. iubemus. nulla, et S. de elec. cum te. l. ii., S. de iure iu. insinuatum. l. i. Set contra. Si bene gestum est negotium, quare restituetur? Solutio: bene gestum est, quia debitum extabat, et pro competenti pretio est res distracta; potuit tamen vendi pluris alii persone. Queritur utrum in hoc auxilium habeat ecclesia semper, ita, nisi ubi invenio cautum contrarium, ut in prescriptione temporali, que non currit contra minorem hodie; olim currebat, set restituebatur, C. quibus ca. in int. re. non est ne. l. ult., set contra ecclesiam currit nec restituitur, xvi, q. iii. placuit, C. de her. in aut. idem, S. de prescrip. c. i. l. i. Utrum autem restituatur contra longissimam? Quidam dicunt quod sic, quia post eam consummatam leditur et non ante; unde habet quadriennium post xl. annos, vel in ecclesia ro.(mana) post centum. Contrarium credo, quia canones admittunt prescriptiones et volunt per eas preiudicari ecclesiis, xvi. q. iiii. volumus; et sola pupillaris etas excipitur, C. de prescrip. xxx. vel xl. an. sicut in rem. Item non succurritur ecclesie in delicto, C. si adversus delic. l. i., xxv. q. ii. ita nos; I. de or. cog. dilectus, ff. quod metus causa. metum. § animadvertendum, C. de sacros. ec. iubemus. *Vinc.* Amen domine."

Similarities of opinion and paraphrases, then, give us no confidence in tracing original authorship back from Tancred's *Apparatus* to comparable glosses in *Set II*. Tancred usually copies accurately a gloss by Silvester, Laurentius, Vincentius, or Johannes Teutonicus.[45] But Gillmann claims that *Set II* in *A* contains only a part of the full *Apparatus* of Laurentius, and that, since many glosses of *Set II* do not exactly correspond to Tancred's renderings, and since many Laurentius-glosses in Tancred are not in *Set II*, possibly the copyists of *Set II* used an earlier, shorter redaction of Laurentius' work, while Tancred had at his disposal a later, more detailed copy

[44] Irnerius—so suggests Kuttner.

[45] Examples: Vincentius, ad t. de rescriptis (I, 2), c. Sedes apostolica (4), v. *includi* (*A*, 118 c. 1; *B*, 100 c. 1); Johannes Teutonicus, ad t. de electione (I, 6), c. Venerabilem (19), v. *in germanos* (*A*, 134 c. 2; *MS. Royal 11 C. VII—Appar.* of Joh.); Silvester, ad t. de sententiis et re iud. (II, 18), c. Ranutius (13), v. *in utraque* (*A*, 168 c. 1-3, in c. 3 ad v. *nature; Par.*, 151 c. 1). Numerous other examples, as usual, could be given if space were available.

of the *Apparatus* of Laurentius.[46] This conclusion, however, is weakened not only by the illustrations given above, but also by the absence of any explicit statement that Laurentius compiled two *Apparatuses,* or revised a first one, and by other considerations that we shall now give.

In his own *Apparatus,* besides citing glosses of others, Tancred occasionally in one of his glosses refers to an opinion of Laurentius, and Gillmann thinks he has found glosses in *Set II* which must be the source.[47] Yet thus to identify as Laurentius' such a gloss is not a sure method, for again other decretalists may have expressed a like opinion on a specific point of law. Indeed, the difficulties are much the same as in the group analyzed above: different references, similar opinions by others than Laurentius, and individual preferences in legal terminology even if ideas are held in common make identification highly doubtful if not impossible.[48]

[46] *Laur. Appar.,* pp. 58 n., 73 f., 75, 78.

[47] *Laur. Appar.,* pp. 58-73.

[48] This group of glosses illustrates these reflections. Gillmann, p. 59, refers to a gl. by Tan., ad t. de electione (I, 6), c. Qualiter (2), v. *administrationi* episcopatus se irreverenter inmiscuit:

"§ . . . et notavit hic doctor meus *laur., quod si electus ante confirmationem aliquid disposuit de rebus ecclesie, ut salve sint, vel quia periture erant, et ideo fecit hoc tanquam electus, non videtur ob hoc administrasse, et ei nocere non debet, ut ff. de acquiren. here. l. pro herede, et C. de tutore qui non satisdedit. tutor.* Subtiliter et bene dixit, sed cautius est quod per alios illa fiant. *t.*" (*A,* 125 c. 2; cf. *AKKR,* CIX [1929], 637). G. now gives, p. 59, an earlier gloss from *A,* l. c. (*Par.* 113 c. 2), which he claims is the one referred to by Tan. as the property of Laur. Yet the older gloss shows a marked difference in wording, even allowing for the paraphrase which Tan. might have made; and further, the older gloss has no reference to "C. de tutore qui non satisdedit. tutor". Moreover, Tan. says, "notavit *hic* doctor meus Laur."; yet the older gloss is ad v. *inmiscuit* in *A* and in *Par.* But in *B,* 105 c. 2-3, in the *Appar.,* of Vinc., there is a third gloss ad v. *administrationi*: it also lacks a reference to *C. de tutore, etc.,* and it refers to a different law in the *Digest, de acquiren. here. etc.*: but it is as close to the words of Tan. as is the gloss in *Par.* I give both to show this:

(*B,* l. c.) Ad v. *administrationi*: "§ Nunquid si inmiscet se tangendo modicam vel parvam vel unam rem? Ar. quod sic, quia qui manumittit

(*Par.,* l. c.) Ad v. *inmiscuit*: "§ Tunc est hoc verum, cum aliquid agit tamquam prelatus, ut ff. de acquiren. her. pro herede. j., et l. iul. § Si servum.

servum inmiscere se videtur, ff. de. her. acqui. si pupillus § Si servum. Credo quod si hoc facit, ut prelatus intromittat se sicut pro herede dicitur se gerere predia colendo vel locando, Inst. de hered. quali. et. differentia. § Item si extraneus, j. de parrociis. Coram (?). Si vero hos faciebat, ut quilibet de capitulo, secus est. Unde preses qui interfuit creationi decurionis est iudex in causa appellationis, ubi appellatur ab aliquo qui contradicit illi creationi, ff. quando appell. sit. l. i. Nec est contra C. de iure deli. l. i., ubi filia manumittendo non admiscet se hereditati, qui olim ante petebat bonorum possessionem emancipata quam adirer."

Sed videtur contrar. huic c. j. eo. t. Quod sicut. Sed illud speciale, ut ibi dicitur. In talibus enim quandoque nimie subtilitatis et rigoris inquisitio converteretur in dampnum ecclesie, ut ibi dicitur, et C. ad tribell. Sancimus. Quid tamen, si, cum sit forte potentior in ecclesia, videt res ecclesie deperire et eas custodit, numquid debet ei obesse? Non videtur, dum tamen hoc protestetur, ut ff. de acquiren. her. pro herede. § i. ver. ceterum. etc."

Which one by Laur.? If either one, the older gloss in *Par.;* but it is not certain, since we have already observed how one glossator can use another. It is certain, however, that Tan., ad e. t., c. Cum vobis (4), v. *due partes* (G. 59; *A,* 125^{v} c. 1), in citing Laur. refers not to the gloss in the early *Appar.* of *A* and *P,* which only vaguely resembles the words of Tan., but to a gloss ad. e. v. in the *Appar.* of Vinc. in *B,* which almost literally agrees with the words ascribed by Tan. to Laur.: (*B,* 105^{v} c. 1)

" § Ubi ergo due partes eligunt de ecclesia aliena, tenebit electio, cum due partes instar obtineant tocius collegii, C. de decur. Nominationum; S. e. t. licet l. i., et si que partes canonicorum non sunt in ecclesia, non dicitur esse capitulum in ecclesia, ff. de decre. ab or. fa. l. lege. Secus si maior pars eligat de alia ecclesia, dum tamen ipsa pars non obtineat duas partes, quo casu primus examinatur et preponitur electio facta de gremio ecclesie, et ita intelligitur lxxxv. c. l. et lxi. obitum: [Here the original gloss of Laur. seems to end; now follows an addition which may be by Vinc.:] vel dic et melius, quod semper prevalet electio de gremio. lxiii. di. literas., C. de episcopis et clericis. in ecclesiis, etiam si duo soli eligunt de eadem ecclesia, ar. vii. q. i. denique. Et quod hic dicitur, ponitur allegando, vel hic obtinet electus a duabus partibus, quia ille erat de gremio eiusdem ecclesie, cum sit de romana ecclesia. Hec tamen solutio videtur reprobari I. e. cum inter, ubi maior pars elegit de alia ecclesia et optinuit. Set forte non fuit hoc oppositum, quod de alia ecclesia fiebat electio, vel etiam pars contradicens non elegit, vel malum elegit."

Cf. Tan., l. c., ad e. v.: " § . . . ad hoc dixit Laur., quod si due partes eligunt de aliena ecclesia, tenet eleccio, quia due partes capituli instar tocius ecclesie optinent . . .; " and the rest as closely agrees with the gloss in *B,* which gives a section not quoted by Tan.

The second part is probably by Vinc., for Tan. in his gloss refers to Vinc. in similar words, *A,* 125^{v} c. 1; Vinc., then, also used Laur., but the gloss of

In one instance, in fact, the gloss in *Set II* corresponds in no way at all to the Laurentius gloss given by Tancred.[49] Finally,

Laur. is not that in *Set II* and in *P*. If Laur. also wrote the early gloss, why do both Tan. and Vinc. quote accurately a different gloss as by Laur., a gloss which contains different references? Another point, which G. overlooks: the earlier gloss, "§ Hoc ita intelligunt quidam . . . ut no.(tavi) in fine illius note, 'Et ita videtur, etc.,' I. e. In causis," refers to a gloss ad e. t. c. 15 (*A* 130^{v} c. 3; *Par.*, 117^{v} c. 2—G., p. 60, n. 1, also notices this other gloss, and gives the end of it); now this second gloss in *A* is marked by a semiuncial *s* (ſ) at the left—for Silv. ? Silvester, then, may have been the *Urheber* of these two glosses rather than Laur. But the whole problem is complicated by the fact that there is another gloss referring to the early gloss ad v. *due partes*, and it uses the word *gremium*, a word ascribed by Tan. to Vinc. and Joh.; to c. 4 Cum in distribuendis I 9 t. de temporibus ord. et qual. ord., v. *ut quia prefatus*: (*A*, 136^{v}, *Par.*, 122^{v}) "§ Dicunt quidam honus esse . . . non obiceretur ei quod non esset de gremio ecclesie, ut S. de elec. cum olim (c. 4 I 6). Quid tamen super hoc sentiam (*A*, sententiam), ibi no.(tavi) . . ." But it is doubtful that this is by Vinc., and Joh. Gal. is uncertain; it must be remembered that it was not impossible for different glossators to use the same word on a given question. So Silv. seems still to be the more probable conjecture, not Laur. or Joh. Gal. or Vinc., though Vinc. may have used both Silv. and Laur.

[49] Gillmann, p. 60, goes far astray on this; gl. ad t. de electione (I, 6) c. Dudum (7), v. *numerus eligentium faciebat* (Tancred and Laurentius, *A*, 127^{v} c. 3): "§ Colligitur ex hoc c. et ex fine, quod in eleccionibus numerus prefertur auctoritati ut I. de appell. Constitutis. Non enim preferenda est dignitas, nisi cum numerus par est ex utraque parte, arg. ff. de pact. Maiorem (D. 2, 14, 8). Arg. contra I. de testibus. In nostra. *la.* . . . Non enim recurrendum est ad dignitatem, nisi cum numerus est par, sicut dixit *lau. t.*" Now G. says: "Was T. hier den L. sagen lässt, steht in A von einer Hand d. ä Sch. eod. ad v. faciebat." This statement is amazing, for ad v. *faciebat* (*A*, 127^{v} c. 3; *Par.*, 115 c. 2; Schulte, *SBW*, LXVI, 128 f.) stands a gloss which says nothing about *numerus* or *dignitas*, and which has different references to the *Digest* and to the *Decretum* and the *Decretals;* furthermore it deals with the wealth of the candidate for election: "§ Sed pone omnes alias circumstancias esse equales, nisi quia unus ditior est. Numquid preferetur dives? Videtur quod sic, nam dicit lex, quod melior efficitur qui ditior efficitur, ut ff. de rebus eorum qui sub tu. si pupillorum. § Si pretor.; ar. di. xxx. hec scripsimus. Preterea prefertur dives pauperi in actione in testamento, ut ii. Q. j. in primis, et l. prohibetur; et ff. de accusato l. nonnulli. Sed videtur ideo postponendus exemplo Socratis, qui non putavit eum divitiis virtutes posse possidere, ut xii. Q. ii. Gloria. Nam istud debet primo profiteri philosophus pecuniam spernere. ut ff. de variis et extraor. cogni. l. i. § j.; cum per hoc quidam detectus fuit non esse philosophus, qui pecuniam voluit retinere, ut C. de mu. patri. professio tua. Ego preferrem divitem si ecclesia, cui preficitur, indiget, et presumerem quod de bonis suis ibi expenderet." Amazing as this opinion is, it is certainly not that which Tan. attributes to Laur.

both Tancred and Vincentius repeat a gloss by Laurentius in such a parallel fashion that the different earlier gloss seems to weigh against the supposition that Tancred and Vincentius both used a revised Laurentius *Apparatus;* rather, they both quoted the only Laurentius-gloss on the point.[50]

Despite all the examples that disqualify Laurentius as the original author, it is undoubtedly true that many of his glosses are to be found in *Set II* of *A* and in *Par.* But lest it be thought, with Gillmann, that the presence of numerous Laurentius-glosses prove that he was the origin of the majority of the glosses in the *Apparatus* and was indeed the compiler of it, the presence of numerous glosses by other decretalists is sufficient caution. Silvester Hispanus, indeed, is well represented by glosses that were later copied accurately by Tancred, or bear *sigla* (including a semiuncial $s = f$) that suggest his authorship.[51] It is even possible that the use of *exaudi* ("Sed hoc exaudi," etc.), which appears in many of the glosses in this *Apparatus* (but not in other *Apparatuses* so far as I have

[50] Ad t. de capitulis canonicorum et mon. (III, 29), c. Dilectus (un.), v. *institutione*:

(*A*, 191 c. 3) Tan.: "§ . . . *Hoc ideo contingit,* sicut dixit la., *quia ius episcopale genus est et habet sub se species specialissimas et etiam subalternas . . . t.*"

(*B*, 156v c. 1) Vinc.: "§ Non ergo retinetur servitus pro partem . . . *Hoc autem inde contingit, quia ius episcopale genus est et habet sub se non solum species specialissimas sed etiam subalternas . . . Vincen.*"

But the earlier gloss reads differently, does not even use the word *genus* (*Laur. Appar.*, p. 68; *A*, l. c.; *Par.*, 172v c. 1): "§ Et ita ius episcopale leditur quod ad aliquas sui species, licet stat quo ad alias . . ." This can hardly be the version of Laur.

[51] Gillmann has identified some of these, "Magister Silvester als Glossator," *AKKR,* CVI, 149-55, and CXII, 99-110. As for the ſ, which occurs at the side of several glosses in *A*, I have come to the conclusion that it is a doubtful means of identification, for other *sigla* follow the glosses and are not placed at the side. In no case, however, can it be proved that Laurentius was the author of any of the ſ-glosses; see on this my article, "Additional Glosses of Joh. Gal. and Silv.," *AKKR,* CXIX, 369. I have also indicated the possible identification of other Silv.-glosses, *op. cit.* pp. 369-73.

observed), is a peculiarity of Silvester's.[52] Further, in one gloss it is stated that "Silvester says nothing here"—an indication that he said much on other points.[53] If this shows that Silvester was not the compiler of the *Apparatus,* no less than three glosses likewise deprive Laurentius of the claim that he compiled it![54]

Of the other decretalists who commented significantly on the decretals of Innocent III, certainly Johannes Galensis can

[52] See my article, "Some Unpublished Glosses," *AKKR,* CXVII, 422 ff.; also, "Additional Glosses of Joh. Gal. and Silv.," *AKKR,* CXIX, 370. Kuttner has wisely cautioned me about making *exaudi* a characteristic of Silv. I accept the caution, but would observe that I have not found *exaudi* in any of the glosses definitely by Laur., Joh. Galensis, Vincentius, Joh. Teutonicus, and Tancred; nor by those who commented on the earlier *Compilationes,* e. g., Bernard of Pavia and Alanus; nor by later decretalists, Innocent IV, Hostiensis, etc. (although they somethimes say *exaudio,* or some other form of the verb than *exaudi*). It may *be,* however, that if our *Apparatus* was compiled from lectures given at Bologna by several decretalists, *exaudi* was an informal, class-room word used by the lecturers to attract the attention of the students. But if so, why the imperative singular (which implies a reader instead of listeners) rather than the plural? *Exaudi* may still be, therefore, an eccentricity of one decretalist; if so, I point to Silv., since in a few of the glosses admittedly his it occurs.

[53] Gl. to Innocent III's letter of introduction to *Comp. III,* v. *bononie*: "§ Non scribit mutine, nam certis locis iura civilia sunt tradenda, ut in const. ff. § Hec autem tria volumina (*Dig.,* Const. *Omnem,* 7). Set nec bononia connumeratur inter ea loca; *unde nichil dicit silvester hic;*" *Par.,* fol. 106 c. 1; *A,* fol. 116 c. 1—in *A nichil* is omitted, no doubt by error of the copyist.

[54] Gillmann himself cites these glosses, but does not draw the proper conclusion, that Laurentius was not the author or compiler of the *Appar.* even though some of his glosses appear in it; *Laur. Appar.,* p. 74 (ad c. 11 Pastoralis, II, 19, v. *excommunicatus, Par.,* 153 c. 1; ad c. 6 Apostolice III, 18, v. *partem, Par.,* 164^{v} c. 1; ad c. 2 Per venerabilem IV, 12, v. *exequitur, Par.,* 182^{v} c. 1). Still another gl., ad t. de homicidio (V, 7), c. Dilectus (1), v. (?), "§ Quid b.' dicat . . . Subgestum" (*Par.,* 190^{v} c. 2), although ascribed to Laur. by Gillmann, p. 110, contains: ". . . Set *l.* di.(cit) ita, quod casuale homicidium . . ." Kuttner pointed this out to me. In *A,* 210 c. 1, *t.* is added after "Subgestum;" yet Gillmann says, not Tan., but Laur. is indicated! I suggest that Tancred wrote the gl. In any event l. does not always mean Laur.; it usually means *lex,* e. g., gl. ad t. de testamentis (III, 19), c. Requisisti (3): "§ Sed pone quod ita dicat . . . Sed non est verum, immo est ecclesie, *ut dicit. l. ff. de annuis leg. l. annua* § *ticia* [Dig. 33, 1, 20 § 1 Attia] . . ." See also above, n. 20.

safely be said to be represented in our *Apparatus*.[55] Moreover, if one consistently followed Gillmann's method of attributing glosses to authors by finding analogies in wording and in ideas, or by thinking that a later addition under the *siglum* of Laurentius means that the first part of the gloss belongs to Laurentius, one would conclude that Vincentius was drawn upon.[56] It would even be possible to assign some glosses to Tancred.[57]

[55] Post, "Some Unpublished Glosses," *AKKR*, CXVII, 416, 420 f.; *id.*, "Additional Glosses of Johannes Galensis," *AKKR*, CXIX, 367 f.; *Laur. Appar.*, pp. 117 f.

[56] Gloss ad t. de electione (I, 6), c. Per inquisitionem (11), v. *recognovit* (*A*, 129 c. 3; *Par.*, 116^{v} c. 1; *Laur. Appar.*, p. 26; G. here and in *AKKR*, CV, 532, n. 3, states that this gloss is by Laur., "§ Licet extra ius nocere . . . xxii. Q. v. hoc videtur;" that Tan. so cites it: "§ Talis enim recognitio sive confessio . . . ar. XXXII, Q. V. Hoc videtur (c. 8). *l.* § et [a later hand in *A* adds *scitis*] recognitio debiti interrumpit prescriptionem . . . debitor." But this gloss by Gillmann's method should be by Vinc., for after *debitor A* adds *Vinc.*, and this same gloss is in the *Appar.* of Vinc. ad e. v. in *B*, 108 c. 1; in *B* there is no "*l*": "§ Talis . . . xxii. Q. v. hoc videtur (c. 8), et recognitio debiti . . . debitor." The original, then, is not to be assigned to Laur.; the correction in *A*, ". . . Hoc videtur. *l.* § *et scitis* . . .," may be an attempt to refer to this passage in c. 8: "Hoc videtur . . . *et scit*, eum falsum iurare, et tacet." Thus *l.* may not in any case refer to Laur.

In the case of these glosses, ad t. de renuntiatione (I, 8), c. Ad supplicationem (2), v. *mortis sibi periculum*:

(*B*, 111 c. 3) Vinc.: "§ Quia habebat ibi persecutores, vel forte qualitate loci faciente, ar. lxxiiii di. quorundam."

(*A*, l. c.) Laur.: "§ Quoniam habebat ibi persecutores et inimicos, vel forte qualitate loci hoc faciente, ar. lxxiii. di. quorundam. *lau.*"

(*A*, 133^{v} c. 1; *Par.*, 120 c. 2) ad v. *mortis*: "§ Quia persecutores ibi forte habebat, ut vij. Q. j. temporis., et hoc tantum, vel qualitate loci hoc faciente, ut lxxiiij. di. sanctorum."

(Both Laur. and Vinc. seem to have used this gloss, but both omit the reference to VII. Q. I. Temporis.)

how can one assert that Laurentius rather than Vincentius wrote the gloss in *Set II*? It is even likely that both merely borrowed the earlier gloss.

Other examples: ad e. t., e. c., vv. *ad sustentationem* (*A.*, l. c.), *conserves ipsius* (*B*, l. c.); and *in vituperium* (*Par.*, l. c.); ad e. t., c. Causam que (3), v. *in uno casali* (*B*); ad e. t., c. Nisi cum pridem (4), v. *nescierit* (*B*, 111^{v} c. 1—here Vincentius gives the exact reproduction of the earlier gl., "§ Unde boetius . . . nec mirum", *Par.*, 120^{v} c. 2, and *A.*, 134 c. 1; the Laur. gl. differs,

Thus if many glosses are demonstrably not by Laurentius, Gillmann's *Würdigung* of the *Apparatus* and description of Laurentius' sources and learning cannot apply to him alone.[58] The term *note* for glosses is used by more than one canonist. Nearly all the decretalists were similarly trained in the Classics, the Bible, the Fathers, the *Corpus Juris Civilis*, the *Decretum* and other bodies of Canon Law, and could quote even Plato, Aristotle, Terence, Ovid, Horace, Seneca and Boethius. As for references to customs and places in Spain, Silvester, like Laurentius and Vincentius, was called Hispanus. Johannes Galensis certainly must have known more about conditions in England than Laurentius; yet Gillmann proudly refers to the latter's knowledge of England because several glosses describe problems of the English church.[59] No decretalist trained at Bologna (most of them were students and teachers there) could claïm an exclusive knowledge of Italian

Laur. Appar., p. 30. Ad t. de in integrum rest. (I, 24), c. Auditis (2), v. *restituimus contra reliquam*:

(*A*, 145^{v} c. 1) Laur. ad. v. *reliquam* (G., p. 40, in error says ad v. *restituimus*): " § Sicut et minor contra minorem, nisi cum peccuniam amisit, ff. de min. Verum. § ul't., ff. ex quibus causis ma. l. ul't. *la.*"

(*B*, 120 c. 3) Vinc. ad v. contra reliquam *ad probandam rationem*: " § Sicut et minor . . . l. ult *vinc.*"

(*A*, 145^{v} c. 1; *Par.*, 130^{v} c. 2) Ad v. *restituimus*: " § In quo casu minor contra minorem restitui debeat, habes ff. de mino. Verum. § ult'. et l. si minor XXV. an. Si. fa."

Vinc. or Laur. for the later gloss? It should be added that Laur. actually has a quite different gloss (G. overlooks it) in *A* ad v. *restituimus*: " § Ecclesia ubicumque capitur, in iuditio restituitur, ut si contumax condempnata est, ff. de min. l. minor; ar. S. c. prox.; vel si non appellavit, vel si dum agit, vel convenitur, in aliquo capta est, ar. ff. de min. ait. pretor. § Sed et in iudic., et l. sed si sine. § Item si non provocavit; vel si non allegat que pro causa (?) faciunt, ut hic, ff. de min. l. minor. § i.; vel propter novas defensiones non apparentes, vel noviter contingentes, ut C. si sepius in integrum resti. post. l. ii. *la.*"

[57] Post, " Additional Glosses," *AKKR*, CXIX, 373; gl. ad t. de renuntiatione (I, 8), c. Nisi cum pridem (4), v. *manzeres*. Also, see above, nn. 26, 32, 54.

[58] *Laur. Appar.*, pp. 79-126.

[59] Post, " Additional Glosses," *AKKR*, CXIX, 374.

affairs; it is therefore pointless to discuss so-called Laurentius-glosses from this point of view, as Gillmann does.[60]

My conclusions, then, point to a compiler of this *Apparatus* who himself wrote, if any, only a small number of the glosses. The greatest number of the glosses cannot be positively identified, but there are indications that many of them belong to Laurentius, Silvester, and Johannes Galensis, especially to Silvester and Laurentius. The appearance of *exaudi,* whether or not Silvester alone liked the word, makes it likely that the glosses were delivered in lectures at Bologna and not written down with publication primarily in mind. The *Apparatus,* therefore, is not by one decretalist who wrote most of the glosses and accepted other glosses from various decretalists, but is a miscellaneous collection of glosses delivered in lectures at Bologna soon after *Compilatio III* was promulgated. Slightly later, Laurentius,[61] Vincentius (before 1215), Johannes Teutonicus (*ca.* 1217), and finally Tancred (*ca.* 1220) wrote complete and systematic *Apparatuses* to *Compilatio III*,[62] and all of them were influenced by the glosses in the earlier *Apparatus.*

If the *Apparatus* is a collection of glosses noted down from lectures given by Silvester, Johannes Galensis and Laurentius, and perhaps by others too, not one of these, in all probability, made the selection, although it is possible that Laurentius later added references and opinions to many of the glosses as they stood in the *Apparatus.*[63] Who, then, was responsible? There is no such evidence for positive identification as exists in the case of the *Apparatuses* of Vincentius, Johannes Teutonicus and Tancred. But one may at least say that our *Apparatus*

[60] *Op. cit.,* pp. 89 f.

[61] Gillmann, to repeat, has not given satisfactory evidence that Laur. wrote two *Appar.,* one partially in *Par.,* and *A* (*Set II*), and the one given in part by Tan. in his own *Appar.*

[62] For the dates, see Kuttner, *Repertorium,* I, 356-9.

[63] Above, n. 25. Joh. Gal., like Laur. and Silv., is also mentioned in a gloss; *Laur. Appar.,* p. 74—but one cannot be certain that this '*Jo.*' is Galensis. Tancred also added to some of the glosses.

in *Par.* and *A, Set II,* like the one attributed by Gillmann to Johannes Galensis,[64] or like several different sets of glosses as yet unexplored,[65] probably represents either the work of students who took notes on lectures and then for their own convenience selected what glosses were deemed important and had them copied as an *Apparatus,* or the work of one student and teacher who was more industrious than others and who compiled from his notes on lectures and from his own lectures and thus made an *Apparatus* not originally intended for publication. The latter source of such an *Apparatus* seems the more likely because one student and teacher, Tancred, did make his own informal *Apparatus* which certain students published as Tancred's.[66] It is tempting, indeed, to believe that the *Apparatus* in *Par.* and *A, Set II,* is the one so compiled.[67]

[64] "Des Joh. Gal. Appar.," *AKKR,* CXVIII, 174-222.

[65] Kuttner, *Repertorium,* I, 358 ff.

[66] See Tancred's own words on this, Schulte, *Quellen,* I, 205; Kuttner, *Repertorium,* I, 358 n. 4, 359 n. 1; A. de Poorter, "Les manuscrits de droit médiéval de l'ancienne Abbaye des Dunes à Bruges," *Revue d'histoire ecclésiastique,* XXVI (1930), 637. Later, *ca.* 1220, Tancred compiled his well-known formal *Apparatus* to *Compilatio III.* It has generally been overlooked that in his earlier years of studying and teaching at Bologna, 1210-1214, he made an earlier *Apparatus* not intended for publication, and which was probably quite different from the later one, but which no doubt included glosses of several of the decretalists who were represented also in the later formal *Apparatus.*

[67] Against this possibility is the fact that there are recognized Tancred glosses, not in *Par.* and *Set II* of *A,* but in the Karlsruhe *MS. Aug. XL,* fol. 121; Kuttner, *Repertorium,* I, 358 f. Kuttner now tells me that many Tancred glosses occur also in Vercelli *MS. 23* and in Erlangen *349* (*Apparatus* assigned to Joh. Gal. by Gillmann, *AKKR,* CXVIII, 189-92, where G. denies Tan.'s authorship, pp. 193-5). It might therefore be argued that the *Apparatus* attributed to Joh. Galensis by Gillmann because of the presence of a number of glosses by Joh. Gal., could have been compiled by Tancred; see Gillmann's study, "Joh. Gal. Appar.," *AKKR,* CXVIII, 174-222. Finally, only rarely could a gloss in *Par.* and *Set II* of *A* be ascribed with plausibility to Tancred, and yet Tancred says that the *Apparatus* was credited to him by the students who extracted the glosses from his own book. These points have been made by Kuttner in letters that he has written to me, and I acknowledge their force. But a few considerations may possibly support at least the conjecture that the so-called Laur.-*Apparatus* is the early work of Tancred himself:

No positive evidence, however, is at hand; and any ascription to Tancred must therefore remain an attractive conjecture.[68]

Of what value are these apparently negative conclusions? If it has been demonstrated that greater caution than Gillmann has displayed is needed in the work of identifying glosses and *Apparatuses* on the early *Compilationes* of papal decretals, some progress will have been achieved in the direction of the method of collating *MSS.* of the same *Apparatus,*[69] of comparing different sets of glosses, of revealing influences of the decretalists on each other, of understanding the very evolution in the schools of this kind of legal literature. Only after such painstaking studies are completed can the vast labor of editing the important glosses be systematically undertaken in order to make available to scholars an important body of sources.

GAINES POST

UNIVERSITY OF WISCONSIN

(1) since it was published without Tancred's permission, the ascription to Tancred could have been omitted in copies made to be sold; (2) the absence of a *siglum* for Tancred is the same as in the case of *sigla* for Silv., Laur., and Joh. Gal., and it is possible that many of the glosses are by Tancred himself (although it must be admitted that this is unlikely; however, Tancred may not, so early in his career of teaching, have given many lectures and written many opinions; he preferred, rather, to note down the glosses of his teachers); (3) his teachers at Bologna on the decretals of Innocent III were above all Joh. Gal. and Laur., and probably Silvester (Schulte, *Quellen,* I, 200; Gillmann, *AKKR,* CVI, 154; Post, *AKKR,* CXIX, 374), and it is precisely the glosses of these three that have been abundantly observed in the *Apparatus;* (4) to give a negative argument, there is much less reason to ascribe the *Apparatus* to Laurentius, Joh. Gal., or even Silv., since there are glosses that mention them, and no such gloss mentions Tancred; (5) against Laur. finally, if a later hand has added *la.* to some of the glosses in *Set II* of *A,* why is it that *la.* or *laur.* is seldom added to any of the longer glosses?—which would be the case if Laur. had been the author of important glosses and the compiler of the *Apparatus.* Yet Tancred's authorship remains conjecture.

[68] Thus my conclusions in preceding articles in the *Archiv. f. kathol. Kirchenrecht,* although there stated tentatively, are herewith modified.

[69] A gloss, obviously, must be accurately edited because of its legal and technical nature. Consequently collation is essential. Thus *Par.* is often valuable in offering better texts than *A.* Space has here been lacking for examples.

THE ADMINISTRATIVE REMOVAL OF LOCAL RELIGIOUS SUPERIORS

THE Code of Canon Law contains no express regulations regarding the administrative removal of religious superiors from office. In order to punish ten distinct crimes[1] the penal deprivation of office is demanded or authorized as a *ferendae sententiae* penalty for religious; in one case, that of the fugitive,[2] this punishment is incurred *ipso facto*. Removal from office as a penalty is declared or imposed either by means of the clearly defined procedure of the criminal trial[3] or by particular decree.[4] The penal removal of religious superiors is, therefore, comparatively free from legal obscurity. The same thing cannot be said of administrative removal.

A clearer notion of what is meant by administrative removal will be obtained by contrasting it with penal deprivation of office. Penal or judicial deprivation ordinarily follows the rules of a trial and the deprivation itself has the character of a vindicative penalty. Administrative (also called economic or disciplinary) deprivation is applied by means of a non-judicial, administrative process. This method of removal[5]

[1] Canons 2331, § 2; 2336, § 1; 2347, n. 2; 2359, §§ 1-3; 2360, § 2; 2389; 2411; 2412; 2413; 2414; cf. Smith, *The Penal Law for Religious*, (The Catholic University of America Canon Law Studies: No. 98, Washington: The Catholic University of America, 1935).

[2] Canon 2386.

[3] Canon 1552, § 1, § 2, n. 2; 2225 (cf. canons 1933-1959).

[4] Canon 2225; cf. Coronata, *Institutiones Iuris Canonici* (Romae: Marietti, 1928), I, 308, 309.

[5] Judicial or processual deprivation is "deprivation" in the strict sense; economic or non-penal deprivation is usually termed "removal," though it cannot be said that the Code is rigid in employing this terminology. Cf. Moersdorf, *Die Rechtssprache des Codex Iuris Canonici*, Veroeffentlichungen der Goerresgesellschaft, Sektion fuer Rechts- und Staats-wissenschaft, Heft 74 (Paderborn: Schoeningh, 1937), p. 201; Maroto, *Institutiones Iuris Canonici*, (3. ed., Romae, 1921), I, 811-812.

was instituted precisely for the good of souls and is not necessarily intended as a punishment. An ecclesiastical office-holder may be penally deprived of office only when he has committed a punishable offense, but administrative removal may be applied whenever one is found to be unfit to continue in office, regardless of whether this unfitness is culpable or not.

It is certain that a religious superior may be penally deprived of office, for the law expressly imposes this penalty. May a religious superior be removed by an administrative act also? If he may be so removed, what causes will justify the removal and what formalities are to be followed in establishing the causes and in decreeing the removal? This article purposes to furnish at least a partial answer to these questions. Attention is confined to the removal of local superiors (the *superiores minores locales* of canon 505), though some references are made to the removal of higher superiors especially in the quotations from pre-Code sources.

Before the Code Suarez [6] taught that for a just and proportionate cause major superiors could remove local superiors even when the latter had committed no fault. A local superior, he argued, holds office not for his own private advantage but for the common good; hence whenever some urgent reason requires his removal for the greater good of the community, his removal may be effected by the major superior. Suarez added that the constitutions and customs of each community must be consulted in order to learn the procedure which must be followed for the valid and licit exercise of this power on the part of the major superiors, because in many institutes the government is not absolutely monarchical, but the consent of definitors and counsellors must be obtained before General and Provincial Superiors may act in matters of graver moment.

Rodericus,[7] although he approached the question from the negative angle, reached the same conclusion as Suarez. He

[6] *De Virtute et Statu Religionis,* Tr. VIII, Lib. II, cap. 2, n. 25—*Opera Omnia* (ed. Berton, Parisiis, 1860), XVI, 94.

[7] *Quaestiones Regulares et Canonicae* (Venetiis, 1611), III, q. 29, art. 9.

declared that regular prelates could not remove conventual superiors without a legitimate cause. In his own order of Friars Minor, Rodericus pointed out, Provincials could not remove Guardians unless the cause for removal was brought before the definitors, and the council considered the reason just and legitimate.

In answer to the question, *An praelati privari possunt sua potestate seu dignitate,* Piat [8] distinguished between general, provincial and local superiors, saying that the General may be deprived of his power if he is not qualified for the service and general welfare of the community, because this was the common teaching of authors among Friars Minor, Dominicans, Barnabites, Carmelites, Jesuits, and Theatines. Provincial superiors, too, could be deprived of their power for the same reasons as general superiors. With regard to Guardians or local superiors, Piat said that these could not be deposed by the community if they were not chosen by the community, but could be removed by the Provincial and his council.

The *Normae* of 1901 [9] recommended the insertion of the following article in religious constitutions: " [The local Superior], during her term of office, cannot be removed or transferred, except for a grave cause and with the consent of the [General] Council." [10] Lanslots [11] commented on this article as follows: " When the constitutions fix the duration of office, a superior is irremovable during that time. Great reasons are required for a removal or a transfer, such as: scandal given to the community; troubles caused by her severity or her weakness; notorious unfitness for the office. The decision

[8] *Praelectiones Iuris Regularis,* (3. ed., Tornaci, 1906), I, 602-603.

[9] *Normae secundum quas S. Congr. Episcoporum et Regularium Procedere Solet in Approbandis Novis Institutis Votorum Simplicium* (Romae, 1901).

[10] N. 310: " Durante ipsarum officio neque deponi, neque alio transferri poterunt, nisi ex gravi causa, accedente suffragio decisivo sororum a consiliis." It is to be noted that this article of the *Normae* supposes a situation where the local superior is also appointed by the General and her council. Cf. N. 309.

[11] *Handbook of Canon Law for Congregations of Women under Simple Vows,* (7. ed., New York, 1916), p. 240. .

rests with the Superior General and the General Council. If the constitutions determine no mode of procedure in such cases, the superiors must act prudently and follow the prescriptions of the common law."

Several passages in the Decretals [12] refer directly to the administrative removal of abbots, though the principle involved would apply with equal force to other religious superiors. In one case Innocent III declared that prelates like the abbot whose conduct was in question could be removed from office for lighter reasons, especially by the Roman Pontiff who has power not only to judge but also to dispose of matters [in an administrative manner?], as the approved custom of certain religious demands.[13] Molitor [14] discusses these and other citations from the *Corpus Iuris Canonici* together with the comments of canonists such as Hostiensis whom he quotes as saying that regulars may be removed from office more easily than seculars.[15]

For the Franciscan Order, Corduba [16] stated that since the Rule of St. Francis directs the General Chapter to depose an incompetent Minister General, the members of the Provincial Chapter can and must depose an unqualified Minister Provincial because, he argued: "*Mos regulae est de similibus similia dare, intelligere, et minora in maioribus implicare. Item ius naturale dicit membrum inutile amputandum*". Piat cited this reasoning of Corduba as an argument in favor of the Provincial's power to remove the local superior.[17]

Clement IX, in the constitution, "*Debitum pastoralis officii*", September 9, 1667,[18] authorized the Provincial and

[12] C. 32, X, *de simonia*, V. 3; c. 6-8, X, *de statu monachorum*, III, 35.

[13] C. 32, X, *de simonia*, V. 3.

[14] *Religiosi Iuris Capita Selecta* (Ratisbonae, 1909), p. 492-502.

[15] In c. 8, X, *de statu monachorum*, III, 35 (cited by Molitor, *op. cit.*, p. 496).

[16] *Expositio Evangelicae Regulae Sancti Francisci* (Venetiis, 1610), cap. VIII, q. 4.

[17] *Praelectiones*, I, 602, note 8.

[18] *Bullarium Ordinis Fratum Minorum Capucinorum* (ed. Tugio, 7 vols., Romae, 1740-1752), I, 112.

definitors of the Capuchin Order to appoint new local superiors at their annual meeting in place of superiors whom they considered as less fitted to continue in office, even though these latter had not yet completed their term. The General Chapter of 1754 laid down regulations for the equitable use of this power. The Chapter decreed that Guardians who were to be removed should first be heard in their own defense. The procedure was to be as follows: the reasons advanced for removal were to be drawn up and signed by trustworthy witnesses. Then, without mention of the names of the witnesses, these reasons were to be communicated to the local superior for his defense. Thereupon, the allegations of unfitness and the superior's defense were to be submitted by the Provincial to his council and after all things had been considered the question was to be put: *An constet de minori aptitudine guardiani vel non?* A secret ballot was to be taken on this question and if the result was unfavorable the local superior was to be removed.[19]

Since the Code few authors have given explicit treatment to the question of the administrative removal of local superiors.[20]

[19] *Ordinationes et Decisiones Capitulorum Generalium O.F.M.Cap.*. (Romae, 1851), p. 236.

[20] The following writers apparently do not touch the subject in their commentaries on canons 499-517 and canon 192: Angelus a SS. Corde. *Manuale Iuris Communis Regularium et Specialis Carmelitarum Discalceatorum ad normam Codicis accomodatum a Nicolao a P. C. M.* (Burgis: "El Monte Carmelo," 1929); Charles Augustine, *A Commentary on the New Code of Canon Law*, II, (2. ed., St. Louis: Herder, 1919); Beste, *Introductio in Codicem* (Collegeville, Minn., 1938); Biederlack-Fuehrich, *De Religiosis* (Oeniponte: Rauch, 1919); Blat, *Commentarium Textus Codicis Iuris Canonici*, II (2. ed., Romae, 1921); Cappello, *Summa Iuris Canonici*, II (2. ed., Romae: Apud Gregorianum, 1934); Chelodi-Bertagnoli, *Ius de Personis* (Tridenti, 1927); Cocchi, *Commentarium in Codicem Iuris Canonici, De Personis* (Taurinorum Augustae: Marietti, 1929); Creusen, *Religious Men and Women in Church Law* (transl. Garesche, Milwaukee: Bruce, 1932); Fanfani, *De Iure Religiosorum* (2. ed., Romae: Marietti, 1925); Goyeneche, *Iuris Canonici Summa Principia*, II (Romae: Apud Commentarium pro Religiosis, 1938); De Meester, *Iuris Canonici et Iuris Canonici-civilis Compendium*, II (Brugis, 1923); Papi, *Religious in Church Law* (New York: Kenedy, 1924); Schoensteiner, *Grundriss des Ordensrechtes* (Wien: Auer, 1930); Sipos, *Enchiridion Iuris Canonici* (2. ed., Pecs: "Haladas R. T.", 1931); Vermeersch-Creusen, *Epitome Iuris*

However, there are at least three authors who have given the subject some consideration. Schaefer[21] says that religious superiors lose their office in the same manner as other ecclesiastical office-holders, namely, in accordance with canon 183. Hence, they are removed or deprived of office in accordance with canon 192. Vidal[22] says much the same thing but in a note he refers to pre-Code writers on the subject of removal and adds that Superiors and Superioresses at the present time may be changed or deposed for a grave cause and with due observance of legitimate formalities. Coronata[23] touches upon the question of removal in commenting on canon 192. In a manual prepared at the request of the Minister General of the Capuchins[24] Coronata treats the question at some length and outlines the procedure which it would be reasonable to follow in removing local superiors.

The nearest thing to a legal guide in removing local religious superiors is, as Schaefer, Vidal, and Coronata point out, canon 192.[25] The first paragraph of canon 192 states the general

Canonici, I (5. ed., Romae: Dessain, 1933); the periodical literature on the government of religious institutes listed by Schaefer (*De Religiosis,* 3. ed., Romae: Herder, 1940, pp. xxxiii-xxxv) includes no articles on this question, although Larraona in an article, "De Iure quo Congregatio nostra regitur" (*Commentarium pro Religiosis,* VI [1926], 347) does refer to the removal of general superiors in his own and in other institutes, saying that consultation of the Holy See is necessary before removal can take effect.

[21] *De Religiosis* (3. ed., Romae: Herder, 1940), 343-345.

[22] Wernz-Vidal, *Ius Canonicum de Religiosis* (Romae: Apud Gregorianum, 1933), p. 132.

[23] *Institutiones,* I, 307.

[24] *Manuale Practicum Iuris Disciplinaris et Criminalis Regularium* (Romae: Marietti, 1938), pp. 22-28.

[25] § 1. Privatio officii incurritur sive ipso iure, sive ex facto legitimi superioris.

§ 2. Si agatur de officio inamovibili, Ordinarius nequit clericum eodem privare nisi mediante processu ad normam iuris.

§ 3. Si de amovibili, privatio decerni ab Ordinario potest ex qualibet iusta causa, prudenti eius arbitrio, etiam citra delictum, naturali aequitate servata, sed certum procedendi modum sequi minime tenetur, salvo canonum praescripto circa paroecias amovibiles; privatio tamen effectum non habet, nisi postquam fuerit a Superiore intimata; et ab Ordinarii decreto datur recursus ad Sedem Apostolicam, sed in devolutivo tantum.

principle concerning privation of office. The second paragraph of the canon applies to irremovable offices and the third paragraph, to removable offices. Canon 192, § 2 does not apply to the office of local superior because this office lacks subjective perpetuity.[26] Minor local superiors are not irremovable in the sense of canon 1411, 4°. Does canon 192, § 3 apply? In other words, may the major superior remove a local superior for any just cause, simply at his own discretion, and without the necessity of any formalities? The major superior could act in this way if the office of local superior were removable in the strict sense. However, an examination of the various removable offices mentioned in the Code reveals a triple aspect according to which removable offices may be viewed. There are offices like that of Vicar General which are conferred *ad nutum;*[27] these offices are manual in the proper sense of that term as contained in canon 1411, 4°. The incumbents of these offices are removable at the mere pleasure of the superior who appointed them. Again, there are offices which are conferred without the determination of any term of office and which are revocable for a just cause at any time at the discretion of the superior. Examples of this type are the *promotor justitiae* and the *defensor vinculi.*[28] These are removable offices in the strict sense of the word; it is this type of office which is directly referred to in canon 192, § 3. Finally, an office may be conferred for a definite term in such a way that the appointment is not revocable during that term except for a grave cause and with due observance of some formality. This is the type of office conferred on the synodal examiners, the pastor consultors, and the synodal or pro-synodal judges.[29] They are appointed for ten years but during that time they may not be removed except for a grave cause and with the advice of the chapter or board of consultors.

[26] Canon 505.

[27] Canon 366, § 2.

[28] Canon 1590, § 2.

[29] Canons 385-388; 1574, § 2.

A comparison of canon 192, § 3 with canon 388, therefore, shows that the privation of removable pastors is not the only case in which the ordinary must observe a certain amount of formality. Indeed, one is led to conclude with Coronata [30] that canon 192, § 3 applies only to those offices which do not call for special removal procedure. Although there is no special procedure outlined in the canons "*De Religiosis*" for the removal of local superiors, canon 388 furnishes a legal analogy [31] which bridges this gap in the law and canon 6, 4° resolves any doubt that might remain as to the manner of removing local superiors by directing in effect that the pre-Code doctrine outlined above be followed even at the present time. The conclusion, therefore, is that notwithstanding canon 2299, § 1 and canon 192, § 3, local religious superiors may not be removed arbitrarily and for any just cause whatever but for their removal the major superior requires a grave cause and, in addition, he is bound to observe some formality. Both these points, namely the grave cause and the observance of proper form, are mentioned by Coronata [32] and by Vidal.[33] In many instances the constitutions of the several religious institutes will contain directions regulating the removal of local superiors. Thus, even after the Code, Capuchin major superiors are directed to follow the summary procedure for removing Guardians which was outlined earlier in this article.[34] In carrying out such particular regulations and, more especially, where such directions are lacking Coronata says that by analogy the major superior would be well advised to follow in general the procedure given in the Code for the administrative removal of pastors, though he grants that this procedure

[30] *Institutiones,* I, 307, note 9.

[31] Canon 20.

[32] ". . . ex gravi causa et aliquali formula servata."—*Institutiones,* I, 307.

[33] ". . . deponi tantum possunt ex causa gravi et servata forma legitima."—*Ius Canonicum,* III (*De Religiosis*), 132, note 98.

[34] *Ordinationes Capitulorum Generalium O.M.Cap.* (Romae, 1928), Ord. 231, § 1; cf. Bulsano, *Expositio Regulae FF. Minorum* (Romae, 1932), p. 542.

is not strictly necessary.[35] Only two things are strictly necessary. 1) *A grave cause* and not merely a just cause. In determining the gravity of the cause the major superior will certainly do well to be guided by canon 2147, § 2 where those things are listed which the Code considers grave reasons for removing pastors. 2) *The observance of some formality.* By this is meant some procedure of the kind referred to in canon 388. In that case the bishop must consult his chapter or board of consultors. This will necessarily involve the submission of the case to their judgment and in order to do this, natural equity will demand some preparation of the case by investigation and the hearing of both sides. The bishop requires merely the advice of his council. This is because the bishop appoints with their advice only and not their consent (except in the synod where the procedure of canon 385, § 1 is followed), therefore the bishop may remove his appointees by merely asking the advice of his council or chapter. The same thing will be true of religious superiors also. If the major superior appoints without the need of any consent, he may remove in the same manner; if he appoints with the consent of his council, he may not remove from office without their consent.[36] What has been said with regard to the authority of the major superior to remove the local superior for a just cause will apply not only in exempt clerical institutes where superiors hold offices in the strict sense [37] but also and even *a fortiori* in non-exempt clerical institutes and in lay institutes whether of men or women. Constitutions that were drawn up according to the *Normae* of 1901 undoubtedly will retain the substance of number 310 of the *Normae* and the major superior will be able to remove local superiors for a grave cause and with the consent of the council.

[35] *Manuale Practicum,* p. 23, note 4.

[36] Cf. Rodericus, *Quaestiones Regulares,* III, q. 38, art. 1, where he holds that a Provincial cannot remove a procurator elected by a local community, ". . . argumento cujusdam juris regulae quae habet quod omnis res per quascumque causas nascitur per easdem dissolvitur" [c. 1. X, *de regulis juris,* V, 41].

[37] Canon 145, § 1.

In considering the causes which are of sufficient gravity to justify the removal of a religious superior it must be remembered that no sin is presupposed in the superior. The purpose of administrative removal is not the punishment of the superior but the spiritual and temporal welfare of his subjects. Indeed, where a crime has been committed which is to be punished by penal deprivation, the procedure of administrative removal cannot be used unless a reason which would justify such administrative action also exists in the same case.[38]

It is certainly a difficult matter to enumerate all the causes which would be grave enough to support a decree of removal from office. The principal ones are: [39] a) Incompetence as well as permanent mental or bodily infirmity, provided that the local superior is thereby incapacitated for his duties and, in the judgment of the major superior, the good of the local community cannot be provided for in some other manner. b) Loss of esteem or good reputation among good religious of his own community or among good and serious-minded persons outside the community whether these be secular or lay persons, and whether this arises from the frivolous conduct of the superior or from a former crime of his which has lately come to light and is now exempt from punishment by reason of prescription. c) A probable occult crime which is imputed to the superior and on account of which the major superior can foresee that great scandal will arise either among the people or within the religious province. d) Maladministration of the temporalities with consequent grave loss to the religious house or province, provided that the removal of the superior is the only remedy for the damage. It is to be noted that in larger communities the Code recommends that the

[38] Coronata, *Institutiones*, III, 501.

[39] Cf. Canon 2147, § 2; Connor, *The Administrative Removal of Pastors* (The Catholic University of America Canon Law Studies: No. 104, (Washington: The Catholic University of America, 1937), p. 47-80; Cappello, *De Administrativa Amotione Parochorum* (Romae, 1911), 32-70; Coronata, *Manuale Practicum*, p. 24.

office of superior and that of bursar or financial administrator should be kept distinct.[40] If, therefore, the maladministration of the local superior can be remedied simply by the appointment of a bursar, this would not be a sufficiently grave reason to justify the superior's removal.

If any of these causes seem to be present, the major superior may take steps to effect the removal of the local superior. As was said above, the major superior will require either the advice or the consent of his council before acting. Using canons 2148-2153 as a guide and assuming that the major superior requires the consent of his council, Coronata has worked out a procedure for the administrative removal of local superiors which involves the following steps: [41]

1. The major superior who has learned either personally or through the depositions of trustworthy persons that a grave cause probably exists for removing a local superior, will submit his information to the council and will ask their vote as to whether the local superior should be given a *canonical invitation* to resign. The major superior will submit to the members of the council all pertinent documents so that they may form a judgment.

2. If the majority of the council so decide, an invitation to resign should be sent to the local superior; this invitation should include the *causes* which impel the higher superiors to request his resignation and must state a *time-limit* within which the resignation must be tendered.

3. The next stage in the procedure depends upon the action of the local superior:

a) If the local superior resigns, his office becomes vacant immediately without the need of any further acceptance on the part of the major superior,[42] since this is already contained in the invitation to resign. It must be noted that for resignation the law requires the observance of canon 186. That is to

[40] Canon 516, § 3.

[41] *Manuale Practicum*, pp. 25-28; cf. *Institutiones*, III, 522.

[42] Canon 190.

say, for validity the renunciation, whether made personally or by a proxy who has a special mandate, must be executed either in writing, or orally in the presence of two witnesses. The notary will then draw up a document declaring the office vacant on account of the resignation of the superior. This document is to be signed by the Major Superior and his council and, if possible, also by the superior who has resigned. The document is to be filed in the archives.

b) If the local superior asks for an extension of the time-limit in order to prepare his defense the major superior may grant this if he sees fit, but he is not obliged to do so. After the expiration of the original time-limit, or of the extended time-limit as the case may be, the procedure is continued as given below in # 4.

c) If the local superior submits arguments in his own defense the procedure is continued as outlined in # 4.

d) If the local superior makes no reply within the time-limit the major superior will investigate to see whether the request for resignation was received. If it is not certain that the invitation was received another is given in an unequivocal manner so that it will be juridically evident that the invitation was extended and received. If it is certain that the first invitation was received, the major superior should make investigations to see whether or not the superior was hindered from making a reply. If the existence of such impediment is discovered, additional time is granted for the reply of the superior. If, however, it is clear that the local superior received the invitation and nevertheless neglected to make a reply when he was able to do so, the major superior with the consent of his council will immediately proceed to issue a decree of removal from office.

4. Before the expiration of the original time-limit (or of the extension of time which has been granted at his request), the local superior will submit his defense to the judgment of the major superior and his council. The latter will examine the arguments offered by the local superior and will either approve or reject them. In weighing the reasons for and against re-

moval the major superior may hear witnesses produced by the local superior as well as other witnesses called *ex officio* by himself, but he is not obliged to do so. The final decision whether favorable or unfavorable to the local superior is to be affirmed by decree and entered in the acts of the process. If the decision is unfavorable the major superior with the consent of his council will proceed to draw up the *decree of removal from office* which he will communicate to the local superior. However, the decree ought not to be published until the ten days elapse which are granted to the local superior for having recourse to the superior general. During this time granted for recourse, Coronata says that the decree of removal is suspended.[43] This suspensive effect certainly would not flow immediately from the nature of an administrative decree. As a general rule, the office becomes vacant as soon as the office-holder is notified of the action of the superior.[44] Unless the contrary is clearly stated, recourse from an administrative act is *in devolutivo*. If the superior desires to suspend the effect of his decree pending recourse he may do so. Indeed, it is advisable that he should do so in order to avoid future difficulties in the event that the superior general reverses his decree, but it will be necessary for him to produce this suspensive effect by means of a positive act. Otherwise, it is in the nature of an administrative act that it takes effect immediately.

5. (Granted, then, that the major superior suspends the effect of his decree), if the ten days elapse without the local superior having recourse to the general superior, the major superior will publish the decree of removal and this publication will effect the vacancy of the office. If the local superior renounces his right of recourse and signifies his acceptance of the decree in a manner which can be recorded in the acts of

[43] ". . . et officium Superioris non vacat nec de iure nec de facto nisi post elapsos terminos."—*Manuale Practicum*, p. 27; he says the same thing regarding the first decree of removal in the case of the irremovable pastor, though he admits that canonists dispute the point.—*Institutiones*, III, 516, note 4.

[44] Canons 190, § 1; 192, § 3; cf. canon 207, § 1.

the process, the decree of removal may be published and may be given effect even before the lapse of ten days.

6. If the local superior makes use of his right of having recourse to the superior general, the major superior must transmit all the acts of the process to the superior general, who will consider the case with his council, making additional inquiries if necessary. If the decree of the major superior is reversed the question is resolved in favor of the local superior. If, on the contrary, the decree is affirmed, this decision is communicated to the superior who had recourse, whereupon the office becomes vacant.

7. Against the decision of the superior general there is no remedy for the local superior except recourse to the Sacred Congregation for Religious. This recourse is always *in devolutivo,* but if the local superior actually has recourse to the Sacred Congregation, the major superior should not confer the vacant office while the matter is pending before the Congregation.

If a major superior would follow the procedure just outlined he would certainly be giving the local superior every opportunity for defense which natural equity demands. "We grant", as Coronata says [45] "that a process in the strict sense of the word, even a purely administrative process, is not necessary for the removal of a local superior, but certainly it would seem that major superiors would be well advised to follow the administrative process described in the text in order to be on the safe side."

What the decree *Maxima Cura* [46] said of the parochial office may be applied *mutatis mutandis* to the office of religious superior:

> Salus enim populi suprema lex est: et parochi ministerium fuit in Ecclesia institutum non in commodum eius cui committitur sed in eorum salutem pro quibus confertur.

[45] *Manuale Practicum,* p. 23, note 4.

[46] S. C. Consist. 20 Aug. 1910,—*AAS,* II (1910), 636.

A prelacy in a religious institute is not an inalienable personal right, but an office established for the common good. If the activity of the superior becomes destructive of this end, even through no fault of his own, his personal convenience and advantage must yield to the common good and he must be removed. It is the difficult duty of the major superior to balance the private good of one individual against the public good of a community. If the major superior never proceeds to administrative removal except for a grave cause and with the advice or consent of his council (as the law of his institute requires), he will always be acting justly and validly, but if, in addition, he follows the process which the Church employs in removing pastors from office, the major superior will be safeguarding the rights of the community and at the same time he will be according the individual superior a full measure of equity and generosity.

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Cases and Studies

MASS AND COMMUNION ACCORDING TO THE ORIENTAL RITE IN A CHURCH OF THE LATIN RITE

In an article appearing in THE JURIST [1] under a similar heading the author contended that the celebration of Mass by the Greek rite clergy in churches of the Latin rite, and the distribution of Holy Communion according to the Greek rite to the faithful of the Latin rite in Latin rite churches is an illicit promiscuity of rites forbidden by the Church.

The article of THE JURIST was prompted by the following question: "On the occasion of a recent mission, at the closing services, the missioners brought in three priests of an Oriental rite to celebrate Mass according to the rite and under both species. Is such promiscuity of rites permissible?" After considerable discussion the author concluded: "One should then probably conclude from the foregoing that what the missioners permitted was an undue promiscuity of rite not warranted by the exceptions made by law for cases of emergency. Such a conclusion of course would need to be modified in the presence of a special indult possessed either by the missioners or by the priests celebrating the Mass and distributing Holy Communion."

A careful study of the laws of the Church and the numerous decisions of the Holy See will reveal that the author erred in his argumentation and consequently in his conclusions. This inaccuracy is based largely on two false premises enunciated repeatedly by the author, viz. 1. the mere fact that a priest of one rite celebrates Mass in a church of another rite or distributes Holy Communion according to his own rite to the faithful of another rite constitutes a "promiscuity of rites"; and 2. the Church allows certain exceptions *only* in cases of emergency.

To prove our contention, let us examine both cases in the light of Pontifical decrees.

[1] Cf. THE JURIST, I (1941), 149-152.

I. Celebration of Mass in a Church of Another Rite

Since the salvation of souls is foremost in the mind of the Church, there is no doubt that in cases of necessity or emergency one may make use of any Catholic Church, provided proper care is taken to carry out the regulations of the Church in connection with Divine Services. The question we are interested in is: Is it permissible to allow priests of one rite to celebrate Mass in the Church of another rite when no necessity or emergency is at hand?

Before one can fully understand the particular rulings of the Church in conjunction with this question, a word or two about Oriental, or to be more specific, Byzantine, altars would be appropriate. The Byzantine rite distinguishes two types of altars: 1. altars consecrated by a Bishop, which are found only in consecrated Churches and are the same as the consecrated altars of the Latin rite; 2. the so-called *Antimension* used in places of worship not consecrated and which compare with the portable altars in the Latin rite.

Bearing this in mind, it is easy to detect the genuine sense of Can. 823, § 2: " Deficiente altari proprii ritus, sacerdoti fas est ritu proprio celebrare in altari consecrato alius ritus catholici, non autem super Graecorum antimensiis ".

A careful reading of the sources indicated in the Code reveals nothing that would suggest the identification of the phrase " altari proprii ritus " with the term *ecclesia-church* and therefore, one cannot invoke this canon in support of the contention that promiscuous use of churches of various rites is prohibited, except in cases of necessity or emergency. To us it seems to be a canon restricting the liberty of priests and as such it would fall under the rule " odiosa stricte sunt interpretanda ". One of the sources used as a basis for this canon [2] is a question submitted to the Holy Office in which it was stated, among other things, that the Greeks *freely* celebrate Mass in the churches and on the altars of the Latin rite,[3] yet this

[2] Cf. decr. S. C. S. Off. 7 Junii, 1726—*Fontes,* n. 786.

[3] Se sia lecito ai sacerdoti latini di celebrare secondo il loro rito, ma senza l'altare portatile di pietra, nelle chiese ed altari dei greci uniti, che sono di tela consagrata dal Vescovo greco con unzioni e con religquie, mentre dai greci *si celebra liberamente nelle chiese ed altari di pietra dei latini.* R. Non licere." (7 Junii, 1726) (Italics inserted)—*Fontes,* n. 786.

custom was never condemned or reprimanded by the Holy See. Prior to this, Benedict XIV plainly stated that, when " sine gravi incommodo unusquisque presbyter proprii ritus ecclesiam adire valeat ", the practise of the Latins to say Mass on the *antimension,* as such, is forbidden, but the practice to say Mass in the Greek churches is not forbidden.

We may also point to a clearer ruling in this matter by Benedict XIV who ruled that 1. the Latin clergy may officiate in Greek churches, if they were invited to do so by the Greek pastors,[4] 2. Greek priests may officiate in Latin churches with the permission of the Latin ordinary, who may grant such permission *even though no necessity exists,* so long as some spiritual benefit may be expected.[5]

The same Benedict XIV flatly denies that such practice constitutes a promiscuity of rites, strictly forbidden by the Church,[6] and furthermore, he states that such practice is necessary to stress the ties of mutual love and benevolence that should exist between Catholics of different rites.[7]

[4] " Ceterum ad tollendam omnem rituum commixtionem, et confusionem, presbyteri, et clerici latini in Ecclesiis Graecorum neque Missas celebrare, neque funeribus, nuptiis, ac baptismis, et aliis Graecorum actibus publicis, et privatis interesse, aut sese immiscere, nisi ad haec specialiter per ipsos Graecos vocati fuerint, audiant, vel praesumant". Cf. Bened. XIV. const. *" Etsi pastoralis"* 26 Maii, 1742, § 9 n. 15—*Fontes,* n. 328.

[5] " Nec presbyteri, et clerici Graeci in Ecclesiis Latinorum, inconsulto Episcopo, cui illae subiiciuntur vel ejus in spiritualibus *vicario generali,* missas, et alia divina officia cum solemnitatibus, et cantu celebrent. Ut autem praefatus Episcopus, sive vicarius generalis, praefatam licentiam rite concedere valeant, nulla praecisa necessitas pro causa requiritur, sed satis est, ut aliqua spiritualis utilitas inde speretur." Cf. Bened. IV. const. *" Etsi pastoralis ",* 26 Maii, 1742, § 9, n. 16. (Italics inserted)—*Fontes,* n. 328.

[6] ". . . Verum, uti jam diximus, interdicta, ritus permixtio appellari nunquam poterit, si ob legitimam aliquam causam sacerdos orientalis ritus ab Apostolica Sede probati, in Latinorum Ecclesiam admittatur, ut ibi Missam ceterasque functiones celebret, et sacramenta populo nationis suae administrat. Id palam Romae fieri intuemur, ubi sacerdotibus armenis, cophtis, melchitis, et graecis patent ad Missam celebrandam templa nostra, ut illorum pietati satis fiat; quamvis suas peculiares ecclesias habeant, ubi rem divinam facere possint. . . ." Cf. Bened. XIV. ep. encycl. *" Allatae sunt,"* 26 Julii, 1755, n. 35—*Fontes,* n. 434.

[7] ". . . Verum, ut eo clarius ostendatur, nullam exinde sequi ritus permixtionem ab ecclesiae legibus proscriptam, non abs re erit verba facere de latinis

Therefore, at least according to the mind of Benedict XIV, the missionaries in question did not violate the laws of the Church, but performed a praiseworthy deed, remembering that in the words of Pius XI the achievement of reunion demands that "the Latins, on their side, must strive to understand better and more profoundly the history and customs of the easterners".[8]

The author of the article referred to in THE JURIST states "both Cappello and Noldin indicate that only in an emergency is a priest justified in celebrating Mass in a church of an alien rite". Our edition, however, reads "sacerdos ritus latini, dum per loca ritus Orientalis peregrinatur et Missam celebrat in Ecclesia etiam ritus Orientalis, debet juxta suum ritum sacrificium Eucharisticum offere; idem de sacerdote ritus Orientalis, qui peregrinatur per loca ritus latini et celebrat in ecclesia ritus latini, dicendum est".[9]

We may add here that Benedict XIV confirmed the privilege granted by Clement VIII to the Ruthenians in 1602, viz., should they "etiam ex sola devotione" officiate in a Latin church they may use the Latin vestments and sacred vessels, and the same privilege was granted the Latin clergy in respect to Ruthenian vestments and sacred vessels.

II. HOLY COMMUNION

Up until the time of Benedict XIV, reception of Holy Communion in different rites was greatly in vogue. For reasons of his own, Pope Benedict XIV strictly prohibited the faithful of the Latin rite to receive Holy Communion from the Greek clergy according to the Greek rite; and the Greek faithful, in those localities where they had their own churches and pastors, were ordered to receive Holy Communion in their own rite. This ruling was

quoque, qui ad sacrificium missae offerendum et divina officia persolvenda in graecorum ecclesiis, ex justa aliqua causa admittuntur. Quod quidem non modo propositam sententiam confirmabit, sed etiam plurimum conferet ad demonstrandum, quam necessaria sit mutua inter catholicos, licet diversi ritus, animorum conjunctio ac benevolentia. . . ." Cf. Bened. XIV. ep. encycl. "*Allatae sunt,*" 26 Julii, 1755, n. 36—*Fontes,* n. 434.

[8] Cf. Pius XI. ep. encycl. "*Ecclesiam Dei,*" 12 Nov. 1923—*AAS,* XV (1923), 573.

[9] Cf. Cappello, *De Sacramentis* (ed. Taurin., 1928), I, 814.

issued to the Italo-Greeks [10] and later extended to the Melchites [11] and Copts.[12]

On April 30, 1866 the Congregation for the Propagation of the Faith declared that Maronite and Armenian priests, who use unleavened bread in their Mass, may administer Holy Communion in their own rite to faithful of the Latin rite. This strict discipline, which admitted exceptions only in cases of *Viaticum* and *Praeceptum Paschale,* was mitigated when the Sacred Congregation for the Propagation of the Faith on August 18, 1893 decreed that in the absence of a church or priest of one's own rite all Catholics, regardless of rite, can receive Holy Communion in whatever rite it may be possible " non modo in articulo mortis et pro paschali praecepto adimplendo, sed etiam quovis tempore *Devotionis Gratia* ".[13] Pope Leo XIII further decreed that Holy Communion may be received in another rite also when " propter longinquitatem ecclesiae suae, non eam possint, nisi cum gravi incommodo, adire ".[14] Pope Pius X removed all restrictions and stated that all Catholics can receive Holy Communion in any of the Catholic rites even solely " pietatis causa ".[15] One is advised to make one's Easter duty in his own rite if possible; to receive the Viaticum in one's own rite still remains " de praecepto ".[16] The same ruling is observed in all the decrees issued by the Holy See since the time of Pius X.

The question may arise as to the meaning of the words " pietatis causa ". The author of the article claims that the phrase " is used in the sense of his (Pius X) predecessor, i. e., when there is some *incommodum* preventing the reception of Holy Communion according to one's own rite."

[10] Cf. Bened. XIV ep. encycl. " *Etsi pastoralis,*" 26 Maii, 1742, § 6, nn. 12, 13, 14—*Fontes,* n. 328.

[11] Cf. Bened. XIV ep. encycl. " *Demandatum,*" 24 Decembris, 1743—*Fontes,* n. 338; const. " *Praeclaris,*" 18 Martii, 1746—*Fontes,* n. 366.

[12] Cf. Bened. XIV instr. " *Eo quamvis tempore,*" 4 Maii, 1745—*Fontes,* n. 357.

[13] Cf. *Coll. S.C.P.F.* (2 vol., Romae, 1907), n. 1846.

[14] Cf. litt. ap. " *Orientalium,*" 30 Novembris, 1894, art. 2—*Fontes,* n. 627.

[15] Cf. const. " *Tradita ab antiquis,*" 14 Septembris, 1912.

[16] *Loc. cit.*

Cappello states "verba pietatis causa ita sunt intelligenda ut unicuique liceat Sacram Communionem recipere in azimo vel in fermentato non solum quando urget necessitas seu causa gravis, sed etiam sola devotionis causa i. e. *absque ulla peculiari ratione*".[17] With regard to the Easter duty, the author states "merum consilium est, et non praeceptum, adeo ut, ne sub levi quidem obliget".[18] The same position is taken by Father C. Damen, C.SS.R. and other recent authors.[19]

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(It has been a privilege to present the competent study of Dr. Gulovich on the question of mutual relations of the Latin and the Oriental Rites in the matter of the Holy Sacrifice of the Mass and the Holy Eucharist. One supposes that it is not amiss, however, to append a supplementary study varying somewhat in argument and conclusion, especially a review made by one whose view has been questioned. The supplementary study appropriately follows herewith.)

The conclusion questioned by Dr. Gulovich was not and is not meant to be an inflexible, incontrovertible proposition. This perhaps could be supposed from the somewhat diffident language in which it was couched. On the other hand, it does not seem necessary to recede from it at this time.

One should, indeed, acquiesce in the view of Dr. Gulovich that Canon 866, § 1, is a *facultas* granted without condition. Distinctions might be made that would indicate the contrary, distinctions which were uppermost in the consideration of the privilege in an earlier issue of this quarterly; distinctions with which the rather summary and cursory statements of numerous authors were read and interpreted; distinctions based on a traditional and ancient policy that seemed to require explicit rather than implicit abrogation. On the other hand, on the occasion of an opportune reference to the commentary on Canon 1 in "Canon Law", by His Excellency, the Most Reverend Apostolic Delegate, the following expla-

[17] Cf. *De Sacramentis* (ed. Taurin., 1928) I, 524.

[18] *Loc. cit.*

[19] Aertnys-Damen, *Theologia Moralis* (ed. Taurin., 1932), II, 169.

nation of the motives prompting the concession was found. "The reasons for this concession are apparent," the commentary reads, "when we consider the trying circumstances in which the faithful at times find themselves in the Orient and in the Occident; and the Church in her maternal way wished to take these difficulties into account with respect to all concerned and make provision for them."[1] This view is the only one consulted which takes into account the traditional policy of the law that required a just cause for the use of the privilege. According to this explanation, the lawgiver presumes a universal existence of a just cause ("taking these difficulties into account with respect to all concerned"). Because of the eminent authority, especially in the law of the Oriental Church, on which this explanation rests, it would seem presumptuous to labor further the question of a just cause in the matter of Canon 866, § 1.

Nevertheless, granting that the faithful need not concern themselves about the existence of a just cause because of the presumption in the law that such a cause exists, the question remains whether Canon 866, § 1, is applicable to the case in which the distribution of Holy Communion itself, considered apart from the right of the communicant, is forbidden. In the encyclical letter of Pope Benedict XIV, *Allatae sunt*, cited in the notes to Canon 823, § 2, and quoted by Dr. Gulovich in footnotes 6 and 7, it is stated that when Mass is celebrated *for a just cause* in a church of the Latin Rite by a priest of an Oriental Rite, the ministrations are to be in the interests of the faithful of his own Rite. This appears from the precise quotation offered by Dr. Gulovich. It is perhaps more definitely stated in another section of the same encyclical letter in which the Holy Father is justifying the celebration of Mass by Oriental priests in churches of the Latin Rite in a definite place (*civitas Balserae*) because the faithful of the Oriental Rite do not possess a church of their own.[2]

[1] *Canon Law* (Philadelphia: The Dolphin Press, 1935), p. 460.

[2] ". . . at nullo iure affirmari potest, Ritus commixtionem Apostolica aliqua Constitutione vetitam, induci ex eo tantum, quod Armenus, Maronita aut Graecus iuxta Ritum suum in Latina Ecclesia, vel Missae Sacrificium, vel alias caeremonias *cum populo sui Ritus exerceat*, aut versa vice Latinus in Orientalium Ecclesia idem praestet; *dum praesertim legitima aliqua subest causa*, de qua in praesenti facti specie nullo modo dubitari potest, *cum Orientales*

Both citations from the encyclical thus postulate the presence of a just cause. Indeed, the need for such a cause is indicated in all the quotations given by Dr. Gulovich from the writings of Pope Benedict XIV. And if one is to measure the nature of the just cause or even the *spiritualis utilitas* from the documents cited, it is such as derives from *the need of priest and people of participating in divine services according to their own rite.* It is not surprising, then, to find Duskie saying, " If possible, one is always bound to celebrate *in a church* and upon an altar of one's own rite " (italics inserted).[3]

The use of the word " promiscuity " is susceptible of a very great flexibility. Generally speaking, it applies to any intermingling of rites that is forbidden by the general law. It is logically *petitio principii,* and a reversal of juridical order, therefore, to define promiscuity according to one's notion of what is forbidden and then demonstrate that what one thinks is permitted does not fall within the definition given. Thus Pope Benedict XIV referred to promiscuity as that intermingling of rites which was forbidden by the Decretals of Celestine III, Innocent III, and Honorius III.[4] Yet he himself uses it in a wider sense in the citation under footnote 4 of Dr. Gulovich's study. It is *commixtio,* in that citation, if priests of the Latin Rite attend even *private* ceremonies of the Greek Rite if this occurs without due permission from the authorities of the Greek Rite.

illi . . . Balserae peculiari careant ecclesia, ita ut, si ipsis Latinorum Ecclesia non pateret, loco plane omni destituerentur, in quo Missae Sacrificium offerri possent, *et cum populo sui Ritus ea exercere,* quae peragenda sunt, ad illos in sancta unione retinendos, ac confovendos "—n. 33 (italics inserted)—*Fontes,* n. 434.

[3] *Canonical Status of the Orientals in the United States* (n. 48, The Catholic University of America, Canon Law Studies, Washington, 1928), p. 115.

[4] These Decretals are found in the *Corpus Iuris Canonici* under the following chapters: c. 9, X, *de temporibus ordinationum,* I, 11 (Celestine III on ordination in one's own rite); c. 4, X, *de consuetudine,* I, 4 (Innocent III forbidding priests of the Latin Rite to confirm even though there may be a custom alleged as justifying it); c. 14, X, *de officio iudicis ordinarii,* I, 31 (Innocent III providing that priests of the proper rite be assigned to the care of the faithful); c. 14, *de celebratione Missae,* III, 41 (Honorius III decreeing deposition from office of a priest of the Latin Rite celebrating Mass *in pane fermentato*).

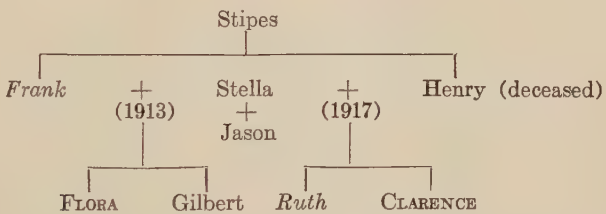
No conclusion can be drawn from the response of the Holy Office on June 7, 1726, because no question was asked regarding the lawfulness of the practice of priests of the Greek Rite in saying Mass on altars of the Latin Rite. The practice was *alleged*, apparently as an inducement to the Sacred Congregation to grant a favorable response. It does not follow that even the allegation was true, much less that the Holy Office sanctioned it.

JEROME D. HANNAN

CONSANGUINITY AND AFFINITY

Frank, a non-Catholic, unbaptized, married Stella, baptized non-Catholic, before a Lutheran minister on April 13, 1913. Two children, Flora and Gilbert, were born to this union. Stella divorced Frank and married his brother Henry, a baptized non-Catholic on March 11, 1917. Two children, Ruth and Clarence, were born to this union. Stella divorced Henry and married Jason, an unbaptized non-Catholic, on July 6, 1920.

Meantime Frank and his two children have become Catholics. Henry died two years ago. Ruth desires to marry Frank and Clarence desires to marry Flora. They will become Catholics if they are permitted to do so. At the same time, Stella will become a Catholic if her marriage to Jason can be regularized.



Aside from other questions, it is clear that Clarence and Flora are half-brother and half-sister, since Stella is the mother of both. No dispensation from the impediment of consanguinity in this first degree of the collateral line is possible (cf. Canon 1076, § 3). This impediment exists also in Anglo-American law, causing the attempted marriage to be void. If both were unbaptized, the marriage would still be void. More probably the impediment in this degree and line arises from the natural law. Flora, of course, as a Catholic is bound by Canon Law, and communicates the impediment to Clarence. If Clarence is a baptized Protestant, he is bound directly (cf. Canon 1077).

As to the marriage of Frank and Ruth, the impediment between them depends upon the validity of the marriage of Frank and Stella. The determination of this impediment is regulated by the Code even though the validity or invalidity was pre-Code. If the marriage was valid, Ruth is impeded as to Frank by the impediment of affinity in the first degree of the lineal descent. But if the marriage was invalid, there exists the impediment of public propriety (cf. Canon 1078) in the same degree and line. The Ordinary can dispense from the latter but not from the former in virtue of his quinquennial faculties from the Sacred Congregation of the Sacraments, and even as to public propriety he would need to be certain that Ruth was not Frank's daughter. As to the impediment of affinity in the direct line, the quinquennial faculties of the Most Reverend Apostolic Delegate exclude it, as do Canons 1043-1045. It is supposed, however, that adequate proof is at hand to show that the impediment of *disparitas cultus* existed as to the marriage of Frank and Stella in 1913, and that it was invalid. In that case, the impediment between Ruth and Frank is public propriety, from which the Ordinary can dispense as indicated.

There exists another impediment between Ruth and Frank, consanguinity in the collateral line, second degree approaching the first through Henry, father of Ruth and brother of Frank. The Most Reverend Apostolic Delegate possesses faculties to dispense from this impediment in virtue of his faculties, but not the Ordinary. Universally in the United States the impediment exists in this degree of the collateral line and a marriage of unbaptized persons in this degree would be void. Even though a dispensation were issued to a Catholic for such a marriage, no minister could safely officiate under the prohibition of the civil law, and if an attempt were made at a common law marriage, it would be held civilly void.

Supposing that adequate proof of the impediment of *disparitas cultus* exists as to the marriage of Frank and Stella, according to the procedure of Canon 1990, or, in case of doubt, by formal court procedure, Frank would not be bound by the impediment *ligamen* nor would Stella. If the impediment *disparitas cultus* can not be proved, Frank could invoke the Pauline Privilege to marry Ruth, if the latter were a Catholic. In that event, however, Stella would be forestalled because in the interpellations, she could not answer that she intended not to become a Catholic if she really did intend to be baptized in the Church. On the other hand, she would be freed from her marriage with Frank the moment he contracted the

valid marriage with Ruth. But under the hypothesis of the validity of the Frank-Stella marriage, the impediment of affinity in the direct line exists and a dispensation can not be issued.

If the marriage of Frank and Stella was invalid, both are free to marry so far as *ligamen* is concerned. Stella needs a dispensation from the impediment *crimen,* because of the attempted marriage (cf. canon 1075) with Jason while Henry lived, because her marriage to Henry was valid. Both were bound by the impediment *crimen* because of their baptism. The Ordinary can issue this dispensation in virtue of his quinquennial faculties.

REFINANCING A MORTGAGE

I desire to transfer the parish mortgage of $70,000.00 from one Trust Company to another in order to save two per cent annual interest. Time is of the essence of this offer, and I should like to be saved the delay that would be involved in writing to Rome. The offer may in all likelihood be withdrawn. I shall not appear in the transaction at all. The latter Trust Company will buy the mortgage from the former, and the former will assign it.

In this case there is involved a transfer by one Trust Company to another of its (the Trust Company's) investment. One Trust Company assigns its claim to another. The pastor does not make any contract at all, even though he is actively interested in promoting the transfer because of the reduced rate of interest which he can obtain. The condition of the church is in no danger (*legal* danger) of becoming worse, but is really improved. Of course, this consideration is irrelevant if the pastor is not making the contract. It could, at least by a strict juridical distinction, enter into the case where he obtained a new loan on a mortgage from a Trust Company to pay off the old loan to the former mortgagee. But in such a case, not only Canon 1533 requiring permissions for contracts endangering the church, but also Canon 1538 touching permission for mortgages would need to be considered. The latter Canon requires that permission be obtained from the Holy See when a mortgage of more than thirty thousand francs is placed on ecclesiastical property. This has usually been considered as a mortgage of six thousand gold dollars, but Dr. Doheny holds that, since the devaluation, only when the mortgage exceeds ten thousand dollars is the permission of the Holy See required.[1]

[1] *Practical Problems in Church Finance,* (Milwaukee: Bruce, 1941), p. 42; cf. Doheny, "Church Finance and Problems of Alienation"—The Jurist, I (1941), pp. 101, 102.

However, Canon 1538 would not seem to apply to the present case even if a mortgage new as to form were placed on the property, provided it did not exceed the amount permitted in the original rescript of the Sacred Congregation of the Council. Indeed, the new mortgage could not be placed for the original amount, if some portion had been amortized in the interval. The reason why the permission is not needed would seem to be that the mortgage is new only formally. Substantially it is the same mortgage. In strictly legal application, it is a different mortgage. But in equitable application, it is the same mortgage.[2]

Of course, Canon 1533 would not apply, as already indicated, because the state of the church is not exposed to danger *legally*. It may be possible that the new Trust Company will be less tolerant in the matter of interest payments or even more prompt to foreclose. But these are psychological, not legal, considerations. The rights of the one Trust Company in law are precisely the rights of the other.

In the present case, it is supposed that no new mortgage was placed on the property, but that the original one was assigned. *A fortiori* then no permission would be required from the Holy See.

Even in the absence of special diocesan statute, however, permission would be needed from the local Ordinary if the pastor intervenes in the transaction in any capacity, and that in virtue of Canon 1527, § 1. The transaction of refinancing exceeds the bounds of ordinary administration. The local Ordinary should hear the diocesan council of administration (Canon 1520, § 3).[2]

If a bond were required by the new mortgagee as additional protection whereas it was not required by the original mortgagee, it would seem to be such a contract as would tend under the terms of Canon 1533 to place the church in a worse condition than previously, and the permission of the Holy See would seem to be required. Under the bond, the mortgagee could sue for a judgment lien on any piece of property belonging to the parish, not merely foreclose on the plot subject to the mortgage. If the mortgage itself extended to all the property of the parish, the new requirement of a bond would, on the contrary, seem not to render the property less secure, and permission of the Holy See would not be needed.

JEROME D. HANNAN

[2] Cf. Doheny, *op. cit.*, pp. 26, 63, 64.

Decrees and Decisions

CANONICAL

The Promises to be Made in Mixed Marriages

In its explanation of an answer to several questions regarding the validity of mixed marriages, the Holy Office conceded the force of implied promises. The question asked the Holy Office concerned a mixed marriage where only the non-Catholic party made formal promises to rear the children in the Catholic faith, etc. Such a marriage, both before and after the promulgation of the Code, was under consideration. A further question was asked of the Holy Office: If such a marriage is invalid, what procedure should be followed?

The Holy Office explained that it had been the constant practice of the Holy See to demand these promises formally from both parties of a mixed marriage. This is the law of cc. 1061, 1071. Nevertheless it would not be an invalid use of an ordinary or delegated faculty if these promises could be implied from certain acts susceptible of proof in the external forum. Acts that would indicate knowledge of the obligation and the firm desire to fulfill the conditions under which a dispensation from the impediment of disparity of cult is obtained could be considered as implying the promises required by law. With this explanation the following questions were answered.

I. Is a mixed marriage, entered into with a dispensation from the impediment of disparity of cult, valid if only the non-Catholic party made the promises according to c. 1061, § 1, n. 2 (c. 1071)?

II. Is such a marriage valid if it occurred before the promulgation of the Code?

To these questions the Holy Office replied that such a marriage was invalid unless the Catholic party could be considered as making implied promises as indicated above.

Feeling that the Holy Office would indicate that such a marriage would be invalid a third question was asked.

III. If this marriage is invalid, is it to be judged according to cc. 1990-92 or before a collegiate tribunal?

To this third question the Holy Office replied that a mixed marriage of this kind is to be adjudicated before a collegiate tribunal unless the conditions of c. 1990 could be satisfied.

As the first and second questions were formulated a dispensation from the impediment of disparity of cult had been obtained. Therefore c. 1990 could not be used. The Holy Office, however, went further and recognized a case where such a dispensation had not been obtained. In this case c. 1990 could be applied.

The answers are dated May 10, 1941.[1]

Decree of the Sacred Congregation of the Sacraments Regarding the Ecclesiastical Tribunals of the Philippine Islands

On December 20, 1940, the Sacred Congregation of the Sacraments, acting upon the request of the Ordinaries of the Philippine Islands, reorganized the ecclesiastical tribunals of these Islands. Cases regarding the nullity of marriage in the first instance will now be considered in one of three tribunals. The tribunals named are: (1) Manila, for its entire province with the exception of the diocese of Lipa; (2) Cebu, for its entire province; and (3) Lipa.

Appeals will be made from Manila to Lipa, from Lipa to Cebu, and from Cebu to Manila.

The officers of the courts of Manila and Cebu will be selected by the Ordinaries who must send their cases to these tribunals.

To its decree the Sacred Congregation of the Sacraments added norms according to which its decree should be executed.[2]

The Renunciation of the Right of Presentation

On July 13, 1940, the Sacred Congregation of the Council decided a case concerning the right of presentation. The facts follow. In 1769 Pope Clement XIV united a parish in the Diocese of Bosa to the first dignity of the Cathedral Chapter of this diocese. The union made the archpriest of the chapter of Bosa the actual pastor of the united parish with the right to present a vicar.

[1] *Acta Apostolicae Sedis*, an. et vol. XXXIII, pp. 294-295.

[2] *Acta Apostolicae Sedis*, an. et vol. XXXIII, pp. 363-368.

This right was renounced on March 11, 1929. In 1937 the parish became vacant. A doubt then arose whether the parish should be conferred according to the common law or rather according to the concession of Pope Clement XIV.

The reply of the Sacred Congregation of the Council discussed the various aspects of renunciation of rights. It was clearly indicated that no strict right of patronage was involved. Further, it was clearly indicated that a complete canonical union had been accomplished. From this it was clear that no actutal renunciation of the right conceded by Pope Clement XIV could be made by the archpriest in 1929. He was powerless to renounce the right granted to the moral person. The most the archpriest could do would be to surrender his actual use of this right. This would then be a personal and temporary renunciation in 1929 and would in no way affect the future use of the right to present a vicar.

With this explanation the Sacred Congregation of the Council decided that the renunciation made in 1929 did not bind the archpriest's successors. Consequently, the right to present a vicar to the Ordinary remained. The common law for the conferring of a parish did not apply.

This solution was approved by Pope Pius XII, July 21, 1940.[3]

Candidates for the Seminary or a Religious Community

The Sacred Congregation for the Religious and the Sacred Congregation of Studies and Universities issued a decree dated the 25th of July, 1941. In this decree two items were established.

(1) If a candidate for the Seminary had belonged to a religious community in any way at all, the Ordinary must confer with the Sacred Congregation of Studies and Universities before the candidate can be admitted.

(2) If a candidate for a religious community had left a Seminary for any cause at all, the Religious Superior must confer with the Sacred Congregation for Religious before the candidate can be admitted.

In both instances the proper Congregation will consider the case and inform the Ordinary or the Religious Superior.[4]

[3] *Acta Apostolicae Sedis,* an. et vol. XXXIII, pp. 369-370.

[4] *Acta Apostolicae Sedis,* an. et vol. XXXIII, p. 371.

Precedence. Archives

On August 5, 1941, the Pontifical Commission for the Authentic Interpretation of the Canons of the Code gave two responses as follows: [5]

I. D. An ex Codice (cann. 106 n. 3, 272, 280, 285, 347) Archiepiscopus Metroplita, qua talis, extra suam provinciam praecedat Archiepiscopo non Metropolitae, seu Episcopis suffraganeis carenti.

R. Negative.

II. D. Utrum verba canonis 379 § 1: *retento facti brevi summario cum textu sententiae definitivae,* referenda sint tantum ad causas, quae a decennio sententia condemnatoria absolutae sunt, an etiam ad causas, quarum rei vita cesserint.

R. Affirmative ad primam partem, negative ad secundam.

Proscribed Books

On May 8, 1941, His Holiness approved the resolution of the Supreme Sacred Congregation of the Holy Office adopted the day previous placing on the Index the following books: [6]

Die Gnosis des Christentums, by George Koepgen.

Das christliche Gewissen in der Entscheidung, by Matthias Laros, printed but distributed as manuscript.

Der Katholizismus der Zukunft, by Hermann Mullert.

Edward Roelker

The Catholic University of America,
Washington, D. C.

CONCILIAR LAWS ABROGATED AND NOT ABROGATED BY THE CODE

(This summary is contained in Appendices in the dissertation of John Daniel Mary Barrett, A.M., J.C.D., n. 83 of the Canon Law Law Studies of The School of Canon Law, The Catholic University of America, entitled *A Comparative Study of the Councils of Baltimore and the Code of Canon Law* [Washington, D. C., 1932]. The references in parentheses are to subdivisions of this dissertation.)

Not Abrogated

1. The need of the written permission of the Ordinary for one cleric to take another before the civil court (Chap. III, Tit. III).

[5] *Acta Apostolicae Sedis,* an. et vol. XXXIII, p. 378.

[6] *Acta Apostolicae Sedis,* an. et vol. XXXIII, p. 331.

2. The prohibition against a cleric suing a layman before the civil court for any Church debts (Chap. III, Tit. III).

3. The freedom of laymen in bringing a cleric before the civil court (Chap. III, Tit. III).

4. The method of supporting incapacitated priests (Chap. III, Tit. IV).

5. The frequency of retreats for diocesan clergy (Chap. III, Tit. V, Art. 1).

6. The requirement of holding the junior-clergy examinations once a year for at least five years (Chap. III, Tit. V, Art. 3, Sec. I).

7. The holding of theological conferences four times a year in cities (Chap. III, Tit. V, Art. 3, Sec. II).

8. The prohibition against managing the money of the laity (Chap. III, Tit. V, Art. 6).

9. The prohibition against clerics' attendance at horse races (Chap. III, Tit. V, Art. 7).

10. The obligation of the Peter's Pence collection (Chap. III, Tit. VI).

11. The obligation of inquiring into the temporalities during the visitation of the diocese (Chap. III, Tit. IX, Art. 4).

12. The obligation of completing the visitation of the diocese within three years (Chap. III, Tit. IX, Art. 4).

13. Regarding the meeting of the Diocesan Consultors (Chap. III, Tit. XIII, Art. 4).

14. The method of fixing the Pastor's salary (Chap. III, Tit. XV, Art. 4).

15. The forfeiture of the Pastor's salary for failure to claim it within the year (Chap. III, Tit. XV, Art. 4).

16. The requirement of a written agreement between the Bishop and Religious taking up diocesan work (Chap. III, Tit. XVI, Art. 1).

17. The requirement that Religious give the Bishop six months' warning before giving up any diocesan work (Chap. III, Tit. XVI, Art. 1).

18. The prohibition against the Brothers of certain Orders entering seminaries without the permission of the Holy See (Chap. III, Tit. XVI, Art. 4).

19. The requirement of documentary proof of the ownership of ecclesiastical goods on the part of Religious doing diocesan work (Chap. III, Tit. XVI, Art. 2).

20. The privilege of solemn vows for certain Visitation nuns in this country (Chap. III, Tit. XVI, Art. 4).

21. That all Catholic societies be under the auspices and patronage of the Bishops (Chap. III, Tit. XVII, Art. 1).

22. The obligation of Pastors to foster special societies for the young people (Chap. III, Tit. XVII, Art. 1).

23. Regarding the Commission established to ascertain the status of questionable societies (Chap. III, Tit. XVII, Art. 2).

24. The permission to repeat in the vernacular the prayers used in the administration of the Sacraments and the burial of the dead (Chap. IV, introduction).

25. The requirement that each candidate for Confirmation have a card with his or her name on it (Chap. IV, Tit. II).

26. The permission granted to our Bishops to lengthen the Paschal season (Chap. IV, Tit. III, Art. 1).

27. The laws governing the removal of the Blessed Sacrament from the tabernacle (Chap. IV, Tit. III, Art. 3).

28. The laws governing the carrying of the Blessed Sacrament to the sick (Chap. IV, Tit. III, Art. 4).

29. The prohibition against accepting less than the standard stipend for Mass (Chap. IV, Tit. III, Art. 6).

30. The prohibition against the practice of advertising in newspapers for Mass foundations (Chap. IV, Tit. III, Art. 7).

31. The censure for attempting marriage after a civil divorce (Chap. IV, Tit. IV, Art. 1).

32. The censure for attempting marriage before a non-Catholic minister (Chap. IV, Tit. IV, Art. 2).

33. The toleration of the burial of non-Catholics in Catholic cemeteries (Chap. V, Tit. I, Art. 2).

34. Regarding the use of proceeds from the sale of cemetery lots (Chap. V, Tit. I, Art. 3).

35. Regarding the care of cemeteries (Chap. V, Tit. I, Art. 4).

36. Regarding holydays of obligation (Chap. V, Tit. 11).

37. The indults to service men and workingmen regarding the law of abstinence, and that permitting us to observe abstinence on the Wednesdays instead of the Saturdays of Lent (Chap. V, Tit. III).

38. The local privilege regarding the Forty Hours' Devotion (Chap. VI, Tit. II).

39. Regarding the singing of Vespers (Chap. VI, Tit. III).

40. Regarding the special times of prayer (Chap. VI, Tit. IV, Art. 1).

41. Regarding the five-minute instruction at Mass on Sundays and solemn feasts (Chap. VII, Tit. I).

42. Regarding the teaching of Catechism (Chap. VII, Tit. II).

43. The requirement of a six-year course in the preparatory seminary (Chap. VII, Tit. III, Art. 2).

44. Regarding the programme of studies for seminaries (Chap. VII, Tit. III, Art. 3).

45. Regarding the examination before admission to the major seminary (Chap. VII, Tit. III, Art. 4).

46. Regarding the testimonial letters required of those changing seminaries (Chap. VII, Tit. III, Art. 4).

47. Regarding reimbursement for the education of a seminarian who changes dioceses (Chap. VII, Tit. III, Art. 4).

48. The Pastor's obligation to ask the prayers of the congregation before ordinations (Chap. VII, Tit. III, Art. 5).

49. The obligation of seminary superiors to give a pre-vacation instruction to the students (Chap. VII, Tit. III, Art. 6).

50. Regarding the erection and support of parochial schools (Chap. VII, Tit. IV, Art. 1).

51. Regarding the Sacraments and parents who send their children to the public school (Chap. VII, Tit. IV, Art. 3).

52. All the laws governing the tenure of Church property except the toleration of the *fee simple* (Chap. VIII, Tit. I).

53. All the laws governing the administration of Church property except the freedom given to the Ordinary in the matter of appointing lay trustees (Chap. VIII, Tit. II).

54. Regarding prohibited means of raising money (Chap. VIII, Tit. III).

Abrogated

1. Regarding affiliation with a diocese (Chap. III, Tit. I).

2. Regarding the method of changing dioceses after ordination (Chap. III, Tit. II).

3. The permission to hold theological conferences only twice a year in rural districts (Chap. III, Tit. V, Art. 3, Sec. II).

4. Regarding the subject matter for theological conferences (Chap. III, Tit. V, Art. 3, Sec. II).

5. Regarding those obliged to attend theological conferences (Chap. III, Tit. V, Art. 3, Sec. II).

6. Regarding the length of the clerical coat (Chap. III, Tit. V, Art. 4).

7. The strict prohibition against clerics' attendance at certain amusements (Chap. III, Tit. V, Art. 7).

8. Regarding the frequency of Provincial Councils (Chap. III, Tit. VIII).

9. The method of choosing candidates for the Episcopacy (Chap. III, Tit. IX, Art. 1).

10. Regarding the law of residence for Bishops (Chap. III, Tit. IX, Art. 2).

11. Regarding the visit *ad limina* (Chap. III, Tit. IX, Art. 3).

12. The obligation of having co-visitors during the visitation of the diocese (Chap. III, Tit. IX, Art. 4).

13. Regarding the frequency of the Diocesan Synod (Chap. III, Tit. X).

14. Regarding the faculties of the Vicar General (Chap. III, Tit. XI).

15. Regarding the number of Synodal Examiners (Chap. III, Tit. XII).

16. Regarding the number of Diocesan Consultors (Chap. III, Tit. XIII, Art. 1).

17. Regarding the appointment of the Diocesan Consultors (Chap. III, Tit. XIII, Art. 2).

18. Regarding the advice of the Diocesan Consultors relative to the calling of a Synod and the alienation of Church property (Chap. III, Tit. XIII, Art. 3).

19. Regarding the method of appointing a Diocesan Administrator (Chap. III, Tit. XIV, Art. 1).

20. Regarding the power of the Diocesan Administrator (Chap. III, Tit. XIV, Art. 2).

21. The method of appointing and removing Pastors (Chap. III, Tit. XV, Art. 1).

22. The method of determining stole fees (Chap. III, Tit. XV, Art. 2, Sec. II).

23. Regarding the division of stole fees (Chap. III, Tit. XV, Art. 2, Sec. II).

24. The exemption of Pastors from the obligation of the *Missa pro populo* (Chap. III, Tit. XV, Art. 3).

25. Regarding the permission for Mendicants to collect (Chap. III, Tit. XVI, Art. 3).

26. Regarding the need of the Ordinary's permission to collect in the case of Mendicant women and others enjoying the privilege of exemption on this score (Chap. III, Tit. XVI, Art. 4).

27. The general permission to administer solemn Baptism in private houses (Chap. IV, Tit. I).

28. The general permission for priests to say Mass in any decent place (Chap. IV, Tit. III, Art. 2, Sec. I).

29. The obligation of Rectors of churches to refuse permission to say Mass to priests who have come to collect (Chap. IV, Tit. III, Art. 2, Sec. II).

30. Regarding the burial of Catholics in non-Catholic cemeteries (Chap. V, Tit. I, Art. 1).

31. The liberty granted in the matter of Exposition and Benediction of the Most Blessed Sacrament (Chap. VI, Tit. I).

32. The holding of Church property *in fee simple* (Chap. VIII, Tit. I).

N. B. As to No. 37 of the laws not abrogated cf. The Jurist, I (1941), 143 sqq. As to No. 53, cf. The Jurist, I (1941), 322 and Canon 1182.

SECULAR

Recognition of Canon Law by the Board of Tax Appeals for the District of Columbia

reported by brendan f. brown, D.Phil. (Oxon.), LL.M., J.U.D.

The Board of Tax Appeals for the District of Columbia has recognized the distinction between the juristic institutions of the Canon and Common laws respectively in such fields as property. There is authority for the conclusion that it will adjudicate cases which involve solely litigants subject to Canon law by determining their rights in accordance with that system, although different results may be reached by following the Civil law, i.e., the law of the State. In the hope that a consideration of a rather recent case, decided by the Board, will prove of value in clarifying this judicial

policy and in demonstrating the possibilities of a comparative study of Ecclesiastical and Civil laws, the decision and summaries of the memoranda which argued for the recognition of Canon law by the Board of Tax Appeals and placed the structures of the two bodies in juxtaposition are presented.

The final adjudication of this case, namely, *Cunningham* v. *District of Columbia*,[1] took place on January 8, 1941, when it was determined that an inheritance tax had been erroneously collected from the petitioner by the District of Columbia, and that the petitioner was entitled to a refund. The petitioner, according to this determination, had rightly contended that no inheritance tax should have been collected because the property was transferred exclusively for religious purposes within the District of Columbia. The opinion of the Board follows:

FINDINGS OF FACT

The petitioner is a Roman Catholic priest and a member of the Society of Jesus, a religious order. He is the pastor of Holy Trinity Roman Catholic Church, which is situated in the District of Columbia, and does now, and for many years past has existed as a church and a religious institution in the District of Columbia.

The property here involved was transferred under the will of Mary J. Manogue, deceased. For many years prior to her death the decedent was a communicant of the Holy Trinity Roman Catholic Church, hereinafter called "Holy Trinity." She was religiously inclined, and for many years personally made the communion bread used in Holy Trinity. When, because of physical disability, she became no longer able to continue such services she contributed money specifically for that purpose.

Mary J. Manogue died domiciled in the District of Columbia on September 15, 1939. On December 31, 1936, she executed her last will. At that time the petitioner was not the pastor of Holy Trinity, and was not known to the petitioner. Another priest was then pastor.

By the second clause of her will the decedent made the devise following:

[1] Board of Tax Appeals for the District of Columbia, Docket No. 338, Opinion No. 255.

I give, devise and bequeath to the Reverend Pastor of Holy Trinity Roman Catholic Church, Washington, D. C., the real property known as 3009 Dumbarton Avenue, Northwest, Washington, D. C., together with all improvements thereon and appurtenances thereto, absolutely, unconditionally and in fee simple. It is my hope that the income from this property or its proceeds will be devoted to the following purposes:

1. To supply the large and small hosts to be used in the celebration of the Masses in Holy Trinity Roman Catholic Church, Washington, D. C.,

2. To maintain the Sanctuary Lamp burning in said Holy Trinity Roman Catholic Church, Washington, D. C., and

3. The remainder to be used as an offering for Masses to be said for the repose of the souls of myself, my mother, my father and my brothers.

The real property covered by the devise has been converted into cash. Such cash since its receipt has been, and still is being used for purposes expressed precatorily in the will.

In a return to the Assessor exemption of the aforesaid transfer from taxation under the Inheritance Tax Law for the District was claimed. The Assessor disallowed such claim, and on June 7, 1940, assessed an inheritance tax on the transfer in the sum of $225.00. On June 19, 1940, the petitioner paid such tax under protest in writing. This proceeding was filed August 15, 1940.

Section 1 of Canon 1536 of the Canon Law of the Roman Catholic Church provides:

Unless the contrary is proved, it is to be presumed that donations given to rectors belonging to religious communities, as (*sic*) given to the church.

Section 2 of Canon 1495 of such Canon Law reads as follows:

Also individual churches and other moral persons which have been created legal persons by the ecclesiastical authority have the right to acquire, keep and administer temporal goods in accordance with the laws of the sacred canons.

Under the appropriate ecclesiastical authority, Holy Trinity has a legal entity similar to a corporation under the civil laws.

Title to all church property in the District of Columbia at the time of the death of the decedent was in the Roman Catholic Archbishop of Baltimore, but such title is limited or defined by Section 267 of the Acts and Decrees of the Third Plenary Council of Baltimore of the Roman Catholic Church, which section reads as follows:

Let the Bishop be always mindful that, although the full ownership of ecclesiastical property is given to him by the civil law, nevertheless, according to the admonition of the sacred canons, he is not the owner of it but only the administrator.

OPINION

The pertinent provision of Article I, Title VI—Inheritance and Estate Taxes—of the District of Columbia Revenue Act of 1939, provides that:

Property transferred exclusively for public or municipal purposes to the United States or the District of Columbia, or exclusively for charitable, educational or religious purposes within the District of Columbia, shall be exempt from any and all taxation under the provisions of this section.

The question, therefore, presented for answer is whether the transfer from Mary J. Manogue to the petitioner, and here under consideration, was exclusively for charitable, educational or religious purposes within the District of Columbia.

The transfer is to the "Reverend Pastor of Holy Trinity Roman Catholic Church, Washington, D. C.," with the "hope" that the transferred property be used for admittedly religious purposes within the District of Columbia. Does the fact that transfer was not unconditionally and specifically for the religious purposes, but with the hope that it would be so used, destroy the exclusive character of the transfer? The Board thinks not, but is of the opinion that the transfer was exclusively for religious purposes in the District of Columbia.

Under the Canon Law of the Roman Catholic Church the property transferred passed under the will of Mary J. Manogue to Holy Trinity as the real or beneficial owner. While it is true that title to the property is in the Archbishop, his relation to such property is under Canon Law, that of an administrator only.

In this jurisdiction the rule obtains that in cases of this character the civil courts will be governed by the applicable canon of ecclesiastical law. *Satterlee v. U. S. ex rel. Williams*, 20 App. D. C. 393.

The result is the same when we apply the civil law. Here we have a devise not to a named individual, as was done in those cases where it was held that the reciting of the office held by the devisee or grantee was *descriptio personae*, but merely to the "Reverend Pastor of Holy Trinity Roman Catholic Church." By the great

weight of authority such a devise is not intended to be personal but to the church. Even if the precatory provisions be ignored, the transfer must be considered as being exclusively for religious purposes within the District of Columbia, since it is clear that the decedent was familiar with the purposes of Holy Trinity and with its exclusive educational and religious character. In *Union Trust Co. v. District of Columbia*, D. C. B. T. A. Docket No. 174, this Board held that a transfer to the Y. W. C. A., without directions as to its purposes, was exclusively for charitable, educational and religious purposes in the District of Columbia, since the beneficiary was organized and conducted exclusively for such purposes. Applying the principle there announced, the Board must hold that the property here involved was transferred exclusively for religious purposes in the District of Columbia, and that the inheritance tax in relation thereto was erroneously assessed. It follows that the petitioner is entitled to a refund of such tax in the sum of $225.00.

Decision will be entered for the petitioner.

In writing the above opinion, the Board of Tax Appeals was guided by two memoranda of law for the petitioner, one written on the civil law by Attorney Joseph I. Cavanaugh, the other on Canon law by Rev. Dr. Louis H. Motry, Dean of the Canon Law School, and Dr. Brendan F. Brown, of the Civil Law School, Catholic University of America, after consultation with Rev. Dr. Clement V. Bastnagel, of the Canon Law School. An abridgment of the two briefs follows.

I. MEMORANDUM BY ATTORNEY CAVANAUGH

Holy Trinity Church has no legal existence as an entity (i.e., in Civil law). In common with all Roman Catholic Churches in the Archdiocese of Baltimore, Holy Trinity is unincorporated, does not hold title through a board of vestrymen or trustees, but, instead, legal title to all the property used by the church and its congregation, in the worship of God and in dissemination of Roman Catholic doctrine is actually vested in the Archbishop of Baltimore, as a corporation sole. Annotated Code of General Public Laws of Maryland, edited by George P. Bagby (Baltimore, 1924), Volume I, page 776. These facts are the common knowledge of all Catholics in this archdiocese and the decedent, knowing them, sought some manner of transferring the property to insure its use and benefit entirely to Holy Trinity parish. What was more natural than to

name "the Reverend Pastor of Holy Trinity Roman Catholic Church?"

Petitioner is a member of the Society of Jesus, a religious community of Roman Catholic priests (page four of transcript), and was well known by the decedent to be a member of that order. Petitioner, in common with every other Jesuit priest, at the time of his ordination in the priesthood, took a vow of poverty, at the same time executing an irrevocable assignment of all property of every kind which he then owned or might thereafter at any time acquire (pages four and five of transcript). Hence this petitioner was, and is, legally precluded from holding property, and any gift to him would, if not designated for parish use, pass immediately, by virtue of the aforesaid assignment, to the Society of Jesus. *Order of St. Benedict v. Steinhauser*, 234 U. S. 640, 34 Supreme Court 938, citing *Goesele v. Bimeler*, 14 Howard 589, and *Schwartz v. Duss*, 187 U. S. 8. See also *Ruse v. Williams*, (1913), 130 Pac. 887; 14 Ariz. 145, and *Maas v. Sisters of Mercy of Vicksburg*, (1924), 99 So. 468; 135 Miss. 505. Miss Manogue, in the course of her lifelong membership in this Jesuit parish, was aware of this legal limitation upon the "Reverend Pastor", whoever he might be on the date of her death. Therefore, had she actually intended to make a gift to the petitioner for his individual use and benefit, she would have failed, and she knew it. * * * *

* * * *

This canon (namely, 1536), and the other canons of the Roman Catholic Church, referred to elsewhere herein, and introduced in evidence herein, should be recognized and accepted as binding law insofar as officials of said Church, and property rights under their control, are concerned. For civil courts have universally recognized and respected the validity of ecclesiastical law in governing member congregations and church officials in religious hierarchies, where such canons do not conflict with the Civil Law. *Satterlee v. United States ex rel. Williams*, (1902), 20 Appeals D. C. 393, citing *Watson v. Jones*, (1871), 13 Wallace 679, as follows:

**** "And it was held, that where the right of property in the civil courts is dependent on the question of doctrine, discipline, ecclesiastical law, rule or custom, or church government, and that has been decided by the highest tribunal within the organization to which it has been carried, the civil courts will accept that decision as conclusive, and be governed by it in its application to the case before it."

The Supreme Court of Appeals of West Virginia, in an opinion rendered in *Sanders v. Meredith*, (1916), 89 S. E. 733, 78 W. Va. 733, stated (page 735):

**** " Although the legal title to the lot is held by trustees, the deed under which they hold does not prescribe any particular use to be made of it. The trustees held it for the benefit of an unincorporated religious society, the Methodist Episcopal Church, and the uses that can be made of it depend upon the ecclesiastical law of the church, so far as it is not inconsistent with the law of the land.**** "

" It is also an implied recognition by the Legislature of the rule, frequently announced by the courts of this country, that they will not review and revise, but will respect, the actions of ecclesiastical bodies in matters purely of ecclesiastical concern. *State ex rel. Watson v. Garvin,* 54 Mo. 353; *Don v. Bolton,* 12 N. J. Law 206; *White Lick Quarterly Meeting of Friends v. White Lick Quarterly Meeting of Friends,* 89 Ind. 136 and 34 Cyc. 1170."

It is to be noted that the Canons, Acts and Decrees and Commentaries applicable hereto are not self-serving declarations or restrictions passed in consideration of this transfer, as was the case in *Levey v. Smith*, referred to hereinafter, but were actually binding Roman Catholic Church law long before Miss Manogue executed her will. * * * *

* * * *

While it is true that there are some decisions holding that use of the religious title in instruments of transfer is merely *descriptio personae*, it is significant that the facts in all such cases show that the deeds or wills in question all included the name of the individual then holding the religious office, (e. g.) " to the Right Reverend John Moore, Bishop of St. Augustine ", *Reid v. Barry*, (1927), 112 So. 846; 93 Fla. 849; *Hyman v. Swint*, (1923), 119 S. E. 866, 94 W. Va. 627; *Donahue, etc. v. Rafferty*, et al., (1918), 96 S. E. 935; 82 W. Va. 535. A contrary view, we maintain, should be taken if the instrument of transfer recites, as in the instant case, " * * * to the Reverend Pastor of Holy Trinity Roman Catholic Church," without naming the individual personally. This is borne out by the ruling of the court in *Church-Wardens of Christ Church v. Mayor etc., of Savannah*, (1889), 9 S. E. 537, 82 Ga. 656. In that case, by an act of the colonial legislature prior to the American Revolution, title to certain church properties was vested in " The Rector of Christ Church in the Town of Savannah " and, late in the nineteenth century, a controversy arose over the right of the

later incorporated Christ Church to hold title to this property. In its opinion, the court said:

> The question in this case being whether this corporation acquired title to the cemetery in controversy, the first step to be taken is to ascertain whether that cemetery was at the date of this act of incorporation (1789) the property of Christ Church.****
>
> The third section of the Act (Colonial Acts, 19; March 15, 1758) declared that the clerk, then present minister of Savannah, should be the rector and incumbent of said church, and that he was thereby incorporated and made a body politic and corporate by the name of "The Rector of Christ Church in the Town of Savannah," *** and that he should be in the actual possession of the church, with its cemetery and appurtenances, to hold and enjoy the same to him and his successors.****
>
> The court below erred, we think, in holding and deciding that the plaintiffs in error (the present church corporation) [2] never had title to the cemetery.

In *Crocher v. Abel*, (1932), 180 N. E. 852, 348 Ill. 269, the Supreme Court of Illinois (page 855) stated:

> Although the property is in the name of the trustees of the corporation and their successors in office, the ownership is no different than if the church were named as grantee by its corporate name, *Glader v. Schwinge* (1929), 336 Ill. 551, 168 N. E. 658.

* * * *

Petitioner contends that, when the gift is to a group or organization, incorporated or unincorporated, which is generally recognized and accepted as religious, charitable or educational in purpose, and which is, in fact, by internal rules or corporate charter, restricted to use of all its property for purposes falling within the exempt classifications and exclusively within the District of Columbia, the intent of the donor to transfer the gift for such exempt purpose or purposes must be presumed and such a gift is exempt from taxation, even if, by its express terms, it is absolute. See *Union and New Haven Trust Co. v. Eaton*, (1927), 20 F. (2d) 419; *St. Louis Union Trust Co. v. Burnet*, (1932), 59 F. (2d) 922. In our jurisdiction, in the case of *Pennsylvania Company for Insurance, etc. v. Helvering*, (1933), 62 Appeals D. C. 254, 66 F. (2d) 284, reversing the United States Board of Tax Appeals in 23 U. S. B. T. A. 1168, the Court of Appeals ruled that a society devoted to the prevention of vivisection of animals is charitable by nature, and that the nature

[2] Words in this citation in parentheses are supplied.

of the donee is decisive of the question of tax exemption. And in a recent opinion, this Board, in the case of *Union Trust Co. of D. C., Admr. v. District of Columbia*, D. C. B. T. A. Docket No. 174, in granting a petition for refund of an inheritance tax payment on the ground that the donee fell by nature into an exempt classification, held:

**** In this proceeding the beneficiary, according to the admitted facts, was organized to, and does in fact exist exclusively for charitable, educational and religious purposes. It is to be assumed that those directing the affairs of the Y.W.C.A. will not divert its property from the purposes for which it was organized and is being conducted. The decedent had every reason to believe that the money transferred by her will to the Y.W.C.A. would be used for such purposes.

* * * *

Of course, if a donor chooses to follow the requirements urged by the respondents, and limits use of his gift to exempt purposes by specific trust provisions, such a gift would be exempt even though the donee named be an individual, bank or trust company, totally unrelated by nature to charity, religion or education. In such a transfer there is justification for the requirement. But when a gift, as the instant one, is to a generally recognized religious donee, the need for the restrictive trust disappears. To require that such a donor must expressly limit the use of his gift to exempt purposes is both redundant and contrary to public policy, which dictates a liberal interpretation of exemption provisions in taxing statutes. *Beggs v. United States*, 27 Fed. Supp. 599 (Court of Claims). * * *

* * * *

As counsel for the taxpayer has recently argued so well in *Union Trust Co., etc. v. District of Columbia*, D. C. B. T. A. Docket No. 174, the Federal Circuit Court decision of *Levey v. Smith*, (1939), 103 F. (2d) 643, is clearly distinguishable on the facts, and is not applicable to instances of transfers to organizations engaged solely in activities that are religious, charitable or educational. And this Board, in its opinion therein, upheld the distinction, quoting from the Circuit Court's opinion " that the Lodge engages in activities and functions which are not charitable, religious or educational." Holy Trinity Church does not, and can not, under ecclesiastical law, engage in any activities that are not religious, educational or charitable (pages four and five of transcript).

And Canon 142 provides:

> Clerics are forbidden to engage, either personally or through others, in any business or trading, whether for their own benefit or that of others.

* * * *

The ownership of this property by the Archbishop, as a corporation sole, is, in the eyes of the church law, merely a right or supervision, to see that the intention of the donor is complied with, and true ownership and enjoyment of the property reside in the parish which is recognized by church law as a " moral person " or an " incorporated res ", even though not a corporation under civil law. And these ecclesiastical laws, binding both upon the Archbishop, as the Ordinary of this Archdiocese, and upon Holy Trinity parish, and its agent, the pastor, prohibit the use of this property, or its income, outside the parish boundaries, or for any purpose other than parish benefit. * * * *

In addition to the Church's law cited above, the civil courts have, when the question has been presenced, held the same, *Tuigg, Trustee, etc. v. Treacy,* (1883), 104 Pa. State 493.

* * * *

In considering application for the exemption provision of this law to the transfer before us, we respectfully submit, that the Board should adopt a liberal interpretation, and thereby carry out the obvious legislative intent in creating such exemptions, by encouraging gifts which by nature are in support of the public welfare and good government. Courts have repeatedly recognized this principle in the construction of similar provisions of various taxing acts. *Helvering v. Bliss,* (1934), 293 U. S. 144; *Union and New Haven Trust Co. v. Eaton,* 20 F. (2d) 419; *Harrison v. Barker Annuity Fund,* (1937), 90 F. (2d) 286; *Beggs v. U. S.,* 27 Fed. Supp. 599.

* * * *

II. MEMORANDUM BY DEAN MOTRY AND DR. BROWN

(1) It is stated in canon 1536 of the Code of Canon Law, which was promulgated in 1918 and is binding law on all Catholics, that unless the contrary is proved, it is to be *presumed* that donations given to rectors of churches (even the churches of religious communities) are given to the respective churches. This canon has been construed by Dr. Woywod in his work, *A Practical Commentary on the Code of Canon Law* (vol. II, p. 187), to mean that the

Canon law supposes that the intention of the donor in making a donation to the rector of a church is to benefit that church, not the rector personally, or his community, even though the pastor or rector belongs to a religious community.

When this principle is applied to the will involved in the present case, it appears that the testatrix is presumed to have intended the devise for the benefit of Holy Trinity Church and not for the individual pastor. It was immaterial in this connection that the pastor belonged to the Jesuit Society and that the devise was in absolute terms in so far as the American law was concerned. In the eyes of Canon law there was nothing in the will to rebut this presumption—nothing express to show that the donor was intending an absolute personal gift for the pastor. Such an intention (i.e.) to give the property to the pastor individually is not morally certain under the circumstances. Indeed the reverse appears to be the case in virtue of the precatory language that the donation be used for the purpose of the church.

The principle which the Code thus announces is the minimum attitude which Church law takes toward donations to pastors, that is, a presumption in favor of a gift to the church stands, unless sufficient proof of *some kind* can be introduced to rebut the presumption. This rule has universal application to Catholic Church property throughout the world, unless the nature of this rebutting proof has been described specifically by Catholic Church authorities in a particular country. In the United States, the Third Plenary Council of Baltimore (1884) (section 276) formulated the rule that donations go to the church and not the pastor unless the contrary clearly and expressly and without doubt is asserted by the testatrix. The formulation of this Council still holds true since there is nothing in the Code of Canon Law (1918) in opposition thereto. Hence, according to this ruling, it is clear that the present testatrix would have had to declare expressly that the property in question was *not* for the church but was for the pastor in his private capacity to prevent the property from going to the church. This she did not do. Hence neither the pastor nor the Jesuit Order could have legally claimed the property as his or its own.[3]

(2) The proprietary structure of Catholic Church property under Canon law is different from that found in American law. This is

[3] *Acta et Decreta,* C. Balt. III, n. 276.

primarily due to two juridical institutions, namely, the "*incorporated res*," without any incorporators, found in the Roman law, and hence the Canon law which resembles the Roman in this respect, but not in the Common law, and secondly, the "*trust*" which is found in the Anglo-American system but not in the Roman or Canon. When the testatrix willed the property in question to the pastor of Holy Trinity Church, the Canon law viewed this transfer *neither* as a donation to the pastor outright for himself nor as a trust, (i. e.) legal title in him to be held for the benefit of the parishioners. Canon law construed this donation to the "incorporated" legal (Canon law) and moral entity known as "Holy Trinity Parish" (See Canon 100). American law does not perceive any "corporation" there, as there are no incorporators and no incorporation by recourse to any incorporating statute or otherwise. But by Canon law there is a juridical entity in which ownership of the property vests for the benefit of itself. The pastor thus becomes a mere agent from the viewpoint of what happened under Common law. His agency is limited. He has in Canon law no property title whatsoever and must follow the course of conduct toward the property which the donor prescribes—in our case to use it for altar bread and the like.

In Canon law no property title, either legal or equitable, vests in the pastor's superior, bishop or archbishop, except that this superior, bishop or archbishop is something like a super-agent to check upon the pastor (the agent of the juridical entity) to see that he is correctly carrying out his agency. But this super-agent (like the agent) can not deviate from the terms of the special agency, that is, the intentions of the donor.

According to Canon 1495, part 2, individual churches and other moral persons * * * have the right to acquire, keep and administer temporal goods. They also enjoy the ownership of the property (Canon 1499, part 2).

(3) "Precatory" words were at one time valid in early chancery. This is still the rule in Canon law. It is not possible to speak of "precatory trusts" in the Anglo-American meaning as there were no trusts in Canon or Roman law in our *technical* sense.

Canon 1513 states in effect that since the Church claims exclusive jurisdiction over donations and bequests in favor of religion or charity, even if the donation is made without the formalities of the law of the State, still as a matter of conscience and of Canon law,

Catholics are bound to see to it that the property goes to the church in question. They may not escape by the loop-hole that there is no donation to the church because of a mistake in draftsmanship with reference to the law of the State.

In last wills made in favor of a church, the formalities of the law of the State should, *if possible*, be complied with, but if they are omitted, the heirs should be admonished to fulfill the *wish* of the testator. Hence Canon law does not know our doctrine which regards a "precatory" word as legally invalid.

(4) In Canon law it is impossible to speak about a parish and hence a juristic personality which can own and administer its own property unless the aim of the subordinate "corporation" or individual organization is religious or educational. Holy Trinity Church, in the sense of the juristic entity which owns and administers the property which is involved in the present case, is restricted to religious or educational activities.

Quebec Court Upholds "Mixed Marriage" Performed by Protestant Clergyman [1]

By a unanimous decision of the Quebec Appeal Court it has been ruled that "mixed" marriages—marriages in which one party is a Catholic and the other a Protestant — are legal and valid in the Province of Quebec if performed by a Protestant minister and notwithstanding any religious impediment on the part of the Catholic party.

The Appeal Court which rendered this ruling was made up of Justice Severin Letourneau, who presided, and Justices A. R. Hall, J. C. Walsh, J. N. Francoeur, and R. Langlais.

The judgment answers, in a civil law sense, a point which dated back to 1908 when the "*Ne temere*" decree made it compulsory for Catholics the world over to be married by a Catholic priest in order to have the marriage recognized as valid by the Church. On a number of occasions in the years since 1908 cases of annulment have come before the Quebec courts on the ground that one party to the marriage had been a Catholic and consequently could not be married by a Protestant minister. The marriage was not recognized by the Church, and some Quebec Superior Court judges, particu-

[1] Credit for this report is given to the N.C.C.W. News Service.

larly Justice Alfred Forest, had ruled that the impediment of Canon Law applied to the civil court, and the marriage must be declared annulled.

Other judges ruled to the contrary, holding that the civil law made no provision for this religious impediment. However, until the present case, the question was never brought before the Appeal Court, Quebec's highest court, by any of the persons affected. The present decision can be upset only by an appeal to the Supreme Court of Canada.

The present case was taken to Quebec's Appeal Court by the Rev. R. W. S. Howard, a Canon of the Church of England in Canada, who had performed the marriage on May 12, 1930, of Laurier Bergeron, who gave his religion as a Catholic, and Wilhelmina Kriklow, a former Lutheran who was attending an Anglican mission at that time. Justice Forest granted an annulment on the question of Canon law.

The Appeal Court ruled that Canon Howard was entitled to appeal in order to prove the legality of what he had done, a point which was placed in doubt by Justice Forest.

Bergeron left his wife in 1934, and filed his action for an annulment in October, 1936. Justice Forest gave his judgment on July 26, 1939, saying in part:

One of the fundamental principles of the Catholic Church is that marriage is not merely a civil contract but an indissoluble spiritual lien and a Sacrament which the Bishop, the parish priest and priests, alone can administer:

The Roman Catholic Church had edicted impediments which the Bishop alone can dispense, so that those submissive to it, in order not to be reputed as concubines, are held to obtain a special dispensation before contracting an alliance, so that the faith and religious liberty of its members be protected and safeguarded:

We find confirmation that marriage is a sacred contract in the fact that on June 3, 1936, the Archbishop of Canterbury—the personage most eminent with the King in the Church of England—who occupies the functions of a Pope in his church, fully understood the sanctity of a contract of marriage by refusing and forbidding any of his ministers from celebrating the union of the Duke of Windsor, who had abdicated the Throne as King Edward VIII, with Madam Wallis-Warfield-Spencer-Simpson, a woman twice divorced and whose two husbands are both living:

Applying the same disciplinary regulations, if the Anglican religion only preaches a sole doctrine for the powerful as for the poor, it is undeniable that Rev. Canon Roger W. S. Howard could not validly celebrate the marriage of

the plaintiff Catholic with the defendant of the Lutheran sect without a dispensation or publication of bans.

Justice Letourneau, in giving the ruling of the Appeal Court, said the Civil Code, promulgated on August 1, 1866, gave the force of law to the views or regulations of the different religious beliefs at that time but only up to that date. He quoted the Civil Code article 127, as follows:

> The other impediments recognized according to the different religious persuasions, as result from relationship of affinity or from other causes, remain subject to the rules hitherto followed, in the different churches and religious communities.
>
> The right also of granting dispensations from such impediments appertains, as hithertofore, to those who have hitherto enjoyed them.

Justice Letourneau expressed the belief that the codifiers intended to halt at the impediments then existing.

Proceeding to deal with the impediments of the Catholic Church, the judge said Canon Law concerning them had been changed twice.

Until November 29, 1764, Catholics had been under the decree "*Tametsi,*" adopted by the Council of Trent, under which a Catholic could not be validly married except by the parish priest, his Ordinary or his delegate.

That was in existence until after the cession of Canada to England. Then, at the request of the Vicar General at Quebec, Pope Clement XIII had extended to Canada in 1764 the declaration of Pope Benedict XIV made in 1741. The Benedictine declaration had declared valid for the United Provinces of Belgium the marriage of a Catholic and a heretic without the form prescribed by the Council of Trent being observed. That meant that between 1764 and April 19, 1908, "the Canon Law of the Catholic religion held as valid in the Province the marriage of a Catholic with a baptized Protestant, even if celebrated by a Protestant minister." This was the situation, the judgment says, which existed at the time of the promulgation of the Civil Code in 1866.

Consequently, the Court of Appeal held, the "*Ne temere*" decree of April 19, 1908, which required all the world to observe the regulations of the Council of Trent, could not apply to the Civil Code as the "*Ne temere*" decree was not in existence when the Civil Code was promulgated and therefore was not an impediment referred to as having existed prior to 1866.

OBSERVATIONS

1—Justice Forest seems to confuse the impediment of mixed religion with the obligation of being married before a competent priest and witnesses. These are two problems in the instant case and not one. The marriage would not be invalid because of the impediment of mixed religion, but it would be invalid because not contracted before a competent priest.

2—Justice Forest seems to assume that the proclamation of the banns or a dispensation from such a proclamation was necessary for the validity of the marriage. Neither was necessary for validity but either was required, of course, for *lawful* action.

3—Justice Forest illustrates the instant case with the action of the Archbishop of Canterbury, taken because of the impediment of *ligamen* (previous bond), which certainly was not the issue in the instant case.

4—In introducing this illustration, Justice Forest was, it seems, making an argument for the recognition of canonical legislation in general by civil courts. The canonical view is, of course, that secular courts should recognize this legislation as to baptized persons.

5—Practically, when marriages are invalid for some canonical reason, there is usually adequate reason for divorce in the secular courts. It is, in such cases, quite unnecessary to recur to the secular courts for a declaration of nullity; a libel in divorce is the procedure suggested.

6—A curious feature of the appeal was that it was made by the minister who officiated at the marriage. Justice Forest seems to have had sufficient reason to doubt the right of the minister to appeal. By all principles of law, this was a function of some public officer. Under the canons, it could be either the Defender of the Bond or the Promoter of Justice; in practice, generally the former. The difficulty, so far as secular courts is concerned, is that there is no public officer charged with the protection of the marriage bond. The appeal evidently could not have been made without allowing the minister's right in virtue of a challenge to an act of his. However, he was not being sued on the basis of the invalidity of that act. Had that been the case, he could have appealed in defense of himself. But in the instant

case, there was no need for him to defend himself, as he seems to have acted within the requirements of the secular law. One might say that he was officious, at least in the sense of assuming an office that should have been entrusted to a public official.

MISCELLANEA

The 1941 Session of the Legislature in Michigan has added, effective May 20, 1941, § 10845-1 to § 10845 of the Code. Both sections deal with the holding of church property by the Ordinary. The old section provided for the holding of this property in trust by the Archbishop and Bishops. The new section enumerates a series of powers which are usual attributes of a corporation, though it does not explicitly state that the Bishop is made a corporation sole. Indeed, the last item in the series is extremely wide in the powers conceded. It reads: "To exercise without limitation of the foregoing, any and all powers relating to the temporalities of the Roman Catholic Church vested in such archbishop or bishop by virtue of his office." In a word, this new section seems to provide for the Church in Michigan what the language of the Act of 1935 seems to provide for the Church in Pennsylvania. (Cf. THE JURIST, I [1941], 166-168.)

The same Session of the Michigan Legislature by § 10439-1, effective May 29, 1941, waives fees and reports omitted by non-profit cemetery associations through which omission their charters were invalidated, provided that $10.00 be paid prior to July 1, 1942, to the Michigan Corporation and Securities Commission. This payment will reinstate all contracts or conveyances made by or to such cemetery association.

* * * *

House Bill No. 149 of the 1941 Session of the Legislature in Illinois amends further the law on the granting of marriage licenses. The new amendment, approved April 22, 1941, requires both parties to apply in person and to make affidavit, which may be made not sooner than one day nor later than fifteen days subsequent to the physical examination. Further, it provides that the person examined must sign the certificate of the physician in the presence of the physician; and if the latter permits the wrong person to sign, he is subject to the same penalties as for a false statement in the certificate.

House Bills Nn. 905 and 906 respectively of the Illinois Legislature in the 1941 Session make Good Friday a legal holiday, the latter extending it to schools. House Bills Nn. 331 and 332 make Lincoln's Birthday a legal holiday, the former extending it to schools. (Section 188 of the Act of June 12, 1909, is the school law affected in each instance.)

House Bill No. 889 of the same Session of the Illinois Legislature, effective July 16, 1941, creates an Institute for Juvenile Research under the authority and supervision of the Department of Public Welfare whose Director is to appoint a Superintendent and assistant. The purpose of the Institute is to conduct scientific studies and to promote the treatment of delinquent, mentally ill, mentally defective, or mentally maladjusted children to make its services and treatment available to children in the custody or under the control of the Department of Public Welfare or of any court, school, public or private, social agency, or parent or guardian.

* * * *

Chapter 951 of the Fifty-fourth Session (1941) of the Legislature of California adds Section 108 to the Civil Code, adding incurable insanity to the causes for divorce and amending Sections 92 and 146 in order to provide for this addition. The other causes for divorce given in Section 92 are adultery, extreme cruelty, wilful desertion, wilful neglect, habitual intemperance, conviction of felony. The new cause exists only when the spouse has been confined for three years in an institution under the laws of California and when a member of the medical staff of that institution testifies that the spouse is incurably insane. The divorce does not relieve the libellant of the obligation of support, and the court shall order such support and even demand a bond for the life expectancy of the insane person, unless the latter has sufficient property for the purpose. If this be not the case, and the libellant does not prove ability to support the insane spouse for life expectancy, the libel fails. The court shall appoint a guardian *ad litem* for the insane person, if the latter have no general guardian or guardian of the person.

* * * *

The First Extra Session of the 53rd Session of the Legislature adopted a joint resolution, filed with the Secretary of State, February 8, 1940, expressing the deep sense of loss felt by the people of the State of California in the death of Pope Pius XI.

A communication from Guy T. Helvering, Commissioner of Internal Revenue to all Collectors of Internal Revenue, advises that in the Code of Federal Regulations " amounts paid or contributed for the privilege of attending an exclusively religious service conducted in a place of worship are not to be considered ' amounts paid for admission ' ". The Revenue Act of 1941, recently enacted by Congress, terminated the exemption on admission fares previously enjoyed by benefits held for religious, charitable and educational purposes.

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In late October Representative Martin J. Kennedy, of New York, introduced a bill in Congress, H. R. 5824, that would repeal section 541 of the Revenue Act of 1941 imposing a tax on entertainments sponsored by religious, charitable, and educational institutions. Rt. Rev. Michael J. Ready, General Secretary of the National Catholic Welfare Conference, had previously in the name of the Administrative Committee, protested.

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Vichy will provide government subsidies for private and denominational schools offering free instruction, allocating funds based on the number of children listed in the register of the community.

Reviews

BOOKS

PRACTICAL PROBLEMS IN CHURCH FINANCE. By William J. Doheny, C.S.C., J.U.D.: with a Preface by the Most Reverend Francis J. Spellman, D.D., Archbishop of New York.

The author of *Practical Problems in Church Finance* is a canonist of considerable experience. The works which he published earlier were for the most part accepted as reliable guides. The author's experience as Advocate and Procurator of the Roman Rota has naturally enriched his knowledge and broadened his views. There are few canonists in America equal to Doctor Doheny. Hence, any book published by Doctor Doheny deserves a sympathetic reading. But his present work does not rank with his volumes on procedure in marriage cases. Yet, it is an honest and appreciated effort to be helpful in a difficult matter.

The work under review should be judged by the author's attempt to fulfill his purpose. This purpose is clearly stated in the author's foreword (p. 8). "To be eminently practical" is the author's aim. Hence, while there is sufficient erudition and frequently ample annotation, the author does not always exhibit a long array of footnotes. These would be scholarly, but they would contribute little to the solving of practical problems. It might be objected that in some cases the author limits himself to citing several modern works on Church Property. This could be a valid objection if many modern works existed on this subject. Unfortunately this is not true.

However, a word of criticism should be mentioned. If the purpose of the author is to be practical, the usefulness of his book is impaired by a too abundant use of Latin. Frequently a statement is made in English, but its explanation follows in Latin. One or the other language should have been used. Even though the author can assume that his readers understand Latin, it is still annoying to turn frequently from English to Latin and back again to English. The Latin in an English book should be reduced to necessary

quotations. Other quotations should be translated. It is a sincere hope that future editions of this work will be thus revised.

The item most affected in alienation is stable capital. In describing stable capital Doctor Doheny ably sets forth his ideas which agree with the traditional view. If these ideas are grasped many canonical problems concerning loans, mortgages, etc. will not be too difficult. The author states rules whereby one can judge whether stable capital is involved in a transaction or not. Gratitude is due to Doctor Doheny for these clear statements. It is useful to have a clear-cut list of items that involve stable capital. It is equally useful to have such a list of items which do not involve stable capital. Doctor Doheny furnishes both.

Further, since the devaluation of the dollar in 1934, a dispute has arisen in regard to the equivalent of six thousand francs or lire in United States money. Doctor Doheny holds that the sum mentioned in the Code of Canon Law must now be taken to be the equivalent of ten thousand dollars. This view is held by some other canonists, but not by all. The solution of the problem depends on the consideration of the devaluated dollar. If the new evaluation is to be permanent, a higher equivalent in United States money must be accepted. If the new evaluation is temporary to meet certain conditions, the former and lower equivalent ($6,000) must be retained. Doctor Doheny cites authorities for his view, and there is some reason for his opinion.

In a book that treats of problems which require various permissions for their solution one would expect some formulae for use in asking these permissions. Doctor Doheny does not disappoint his readers. The necessary formulae are included (cf. p. 86, etc.). These formulae are easy to use. They constitute an appendix. A second appendix is the Most Reverend Apostolic Delegate's letter on the administration of temporalities, dated November 13, 1936.

Doctor Doheny's work is offered to the public with a commendatory preface by the Most Reverend Francis J. Spellman, D.D., Archbishop of New York. Doctor Doheny deserves the praise he receives, and the Archbishop of New York is himself to be commended for his well-stated and succinct expression of the Church's position on the possession and use of her property.

Edward Roelker

The Catholic University of America,
Washington, D. C.

PERIODICALS.

Charitable Trusts

"Religious Trusts in their Legal Aspect", a survey of English decisions touching charitable bequests, by W. H. D. Winder, *The Clergy Review*, New Series XXI (1941), 63. Considers historical and current attitude of English courts towards charitable and religious trusts. In the case *Re Ward* (1941—The Times Law Reports, LVII, 473) property was bequeathed to the Archbishop of Westminster "upon trust that he shall forthwith in his absolute discretion devote the same for the furtherance of educational or charitable or religious purposes for Roman Catholics in the British Empire in such manner and in all respects as he may think fit." "Religious" purpose had to mean charitable purpose or the trust would have failed for uncertainty of beneficiaries capable of enforcing it. The Attorney General steps in if the trust is charitable and so the latter may be uncertain as to beneficiaries.

In another case *Re Forster* (1939), the Society for the Relief of Infirm, Sick and Aged Roman Catholic Secular Priests in the Clifton Diocese was held to be a charity because its funds were clothed with a trust for the advancement of religion indirectly by providing for retirement of aged priests and the appointment of young men. The famous case of *Cocks v. Manners* (1871) declared that a contemplative order was not a charity but that an active congregation was. This opinion was followed in the case *Re Delany* (1902) in which religious communities caring for aged and gratuitously nursing the poor were held charities—not less so because their activities were accompanied by contemplation or because motives were supernatural. The courts therefore clearly favor works over faith. So Mr. Buchman's Oxford group was held not to be a charity.

Bequest would also fail for uncertainty if Archbishop had discretion to choose groups that would not be charities, as occurred in the case *Re Davidson* (1909). Even though the trustee would undertake by a binding agreement to restrict his choice to charities, the trust would fail. In the case *Re Davies* (1932), the purpose of the trust was too wide in including work "connected with" the Catholic Church. In the case *Re Schoales* (1932), "my entire property to the Roman Catholic Church for the use thereof" was valid. Mr. Justice Bennett accepted the argument of the Attorney General that it was a gift "to an operative institution which gives spiritual edification to its members." In the case *Farley v. Westminster Bank, Re Ashton* (1939), the House of Lords rejected a gift "for parish work" as not exclusively religious, though in the case *Re Van Wart* (1911) a gift for the parochial purposes of a diocese was declared a charity, though possibly this decision is now overruled. "Church purposes" has been held to refer to the structure of the church and to be religious exclusively. So in the case *Re Martley* (1931), a gift was upheld "for the benefit of the work of the Cathedral".

In the case *Thornber v. Wilson* (1858), the Vice-chancellor said, "A gift to a minister as such is a charitable bequest". In the case *Re Smith* (1914), a bequest "for the society or institution known as the Franciscan Friars of Clevedon in the County of Somerset absolutely" was held to be a gift to the friars personally who were held not to be violators individually of the penal

laws against religious orders which were still in effect, not swept away by the Emancipation Act of 1829 but only by the Emancipation Act of 1926. In the case *Re Barclay* (1929), decided under the law prior to the latter Act because the will was made in 1903, a Jesuit was held to take not for his personal benefit or for his confreres or for the community, but for the church, and the gift was upheld. Both these cases would have been decided otherwise in the Irish courts.

In the case *Re Connolly* (1914) £500 was given to discharge a debt which was £63 at testator's death. The court held that the surplus was to be devoted to the purposes of that parish.

The doctrine of *cy pres* was invoked in *Cary v. Abbott* (1802), in which there was a bequest for bringing up poor children in the Catholic Faith. The purpose was unlawful under the penal laws. The court applied the gift to education in general. But the doctrine of *cy pres* can not be invoked if the institution favored has ceased to exist; thus a bequest was lost when the seminary was discontinued even though the words were added, "for the education of priests in the Diocese of Westminster". In the case *Bute's Trustee v. Bute* (1905), the trustees would not accept conditions and *cy pres* was refused.

War Cases

"Anointing Air Raid Victims", "Reconciliation of Bombed Churches"—Consultations by E. J. Mahoney in *The Clergy Review,* New Series, XXI (1941) pp. 114, 116. Two questions arising out of the bombing of English towns are briefly discussed in these replies. The former extends the application of the modern teaching on apparent death to victims no matter how badly crushed. The latter shows that partial destruction does not execrate or violate a church, referring to Canon 1187. As to the death of persons in the bombed church, it is argued that it is at least doubtful whether the enemy committed the delict of homicide or the *iniuriosa* shedding of blood as required in Canon 1172, § 1. It is stated that the church might be reconciled *ad cautelam* (Canon 1174, § 2).

Hospitals

"Liability of Hospitals for the Negligence of Their Employees"—Notes, *St. John's Law Review,* XV (April 1941), 275. Agrees that only by express legislative enactment can it be hoped that an alignment can be made of the mass of confused decisions on the subject of charitable, state, and municipal hospital liability. Section 8 of the Court of Claims Act, which became law in 1921 applies the doctrine of *respondeat superior* to the state. The statute should be amended so as to clear up the doubt as to whether it extends to political subdivisions of the state. Commentator states there is no basis in fact or in reason for exempting a charitable institution from the doctrine of *respondeat superior.* Legislature should compel general policies of indemnity to protect charitable trusts from diversion. See discussion of *Nicholson* v. *Good Samaritan Hospital*—The Jurist, I (1941), 158.

Criminal Law

"Mistake of Law and *Mens Rea*", Livingston Hall and Selig J. Seligman—*University of Chicago Law Review*, VIII (June 1941), 641. Traces history of the common law rule that mistake of law is no defence, omitting cases in which specific criminal intent is required. Evaluates many exceptions urged by counsel in modern times, often with success. Discusses possible defenses from fact that mistake is reasonable, or based on advice of counsel or on custom; these circumstances are irrelevant in the present state of the decisions. Discusses mistake of law when legislation may have led the community or the defendant to believe that certain conduct is not illegal; when judicial decision may have had this effect; when officials in the executive department may have caused the error. Considers numerous situations under each of these heads: when the existence of a statute was not known; when its constitutionality was not determined when crime was committed; when it was indefinite in meaning; when the existence of a judicial opinion was not known; when a prior decision of the highest court is overruled after the crime; when earlier dicta are not followed; when an injunction prevented the execution of the statute at the time of the crime; when the defendant relied on acts of the chief executive; when he relied on administrative regulation; when he relied on opinions of the attorney general and other law officers; when he relied on rulings of public officials. The conclusion is that when the proceedings are civil in intent though criminal in form, the defense should not be given; but where they are actually as well as formally penal, defense should be given even in minor crimes.

Tort-Libel

A suit involving libel (*Rose* v. *Daily Mirror, Inc.*, 248 N. Y. 335, 31 N. E. [2nd] 183 [1940]) is discussed in the *Fordham Law Review* for May (L [1941]). The plaintiff's complaint alleged that a false publication was made by defendant's newspaper in an article concerning a deceased "Baldy Jack" Rose, who was described as a self-confessed murderer who lived in constant dread of the underworld. The plaintiffs were named as the surviving wife and children. No other reference to the plaintiffs in the article was alleged. On an appeal from an order of the Appellate Division granting a motion to dismiss the libel action it was held, three judges dissenting, that a libel or slander upon the memory of a deceased person which makes no direct reflection upon his relatives, gives them no cause of action though a loss of social standing is in consequence suffered by them. Judgment was affirmed.

A publication exciting adverse opinion is *in fact* defamatory, though not always actionable. The estate of a deceased person has no action for the defamation of the deceased; nor do his survivors, though they suffer indirectly. In cases like the present almost universally the solution of the courts is to deny recovery, following the first American decision (*Wellman* v. *Sun Printing and Publishing Assn.*, 66 Hun 331, 21 N. Y. Supp. 577 [1892]). In the latter case, the article noted the plaintiff's alleged recounting to the police of the development of his suspicions concerning his wife's indiscretions and resulting pregnancy.

The leading exposition of this view which denies compensation for indirect injury places reliance on the American theory of social relations where success or failure is entirely independent of the accidents of rank or family connection and where *theoretically* at least no man's character can be aided or retarded by the character of his relatives. Another reason is the difficulty of deciding who shall be placed within the protected circle. The latter might be extended to include even close friends.

In the case of libel or slander upon an individual member of a partnership, it seems to be held that the firm may recover for the injury done to its business, provided that the publication reflects upon the standing of the firm. The same rule has been applied to suits by a corporation where its officers have been defamed but only if the charge injuriously affects its credit, or the management of its business and necessarily causes pecuniary loss. If these cases require that the publication must be understood as affecting the partnership or the corporation directly, they are clearly consistent with the general rule, and the facts of the cases permit one to suppose that they do.

The Restatement of the Law of Torts (1938, § 564) gives examples of actionable indirect defamation: A is a cuckold; B is illegitimate. A's wife and B's mother have action because of implied misconduct.

Chronicle

GENERAL

His Eminence Nicola Cardinal Canali, president of the Pontifical Commission for the Government of Vatican City, was appointed Cardinal Grand Penitentiary one week after the death of His Eminence Lorenzo Cardinal Lauri which occurred October 8. Cardinal Lauri was 76 years old.

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The Pontifical Work of Priestly Vocations has been founded in the Sacred Congregation of Seminaries and Universities by a Motu Proprio of Pius XII.

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At the opening of the juridical year of the Sacred Roman Rota on October 5, Msgr. Giulio Grazioli, dean, presented to the Holy Father a bound volume containing the record of Rota cases and decisions. Last year the Rota considered 87 cases, of which 82 were applications for decrees of nullity, 30 of which were granted.

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On September 16, the Most Rev. Apostolic Delegate and Vice President Henry A. Wallace were distinguished speakers at the observance of the centennial of the founding of Fordham University.

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One hundred and eleven members of the Hierarchy attended its annual meeting at The Catholic University in mid-November. The Most Reverend Apostolic Delegate read a cablegram of gratitude from the Holy Father for the support of his efforts to aid the suffering in nations affected by the war.

A letter from His Eminence Luigi Cardinal Maglione, Papal Secretary of State, noted that on May 13, 1942, the Holy Father observes the twenty-fifth anniversary of his elevation to the episcopate. His Eminence Dennis Cardinal Dougherty, who presided at the Meeting, appointed the Most Reverend Archbishops as a committee to arrange for solemn observance of the Holy Father's anniversary.

Most Rev. John F. O'Hara, C.S.C., D.D., Military Delegate, was elected a member of the Board of Trustees of The Catholic University of America.

At the organization meeting of the Bishops elected to the Administrative Board of the National Catholic Welfare Conference, Most Rev. Edward Mooney, D.D., Archbishop of Detroit, was elected to succeed himself as Chairman of the Board; Most Rev. Samuel A. Stritch, D.D., Archbishop of Chicago, became vice chairman and treasurer; and Most Rev. Francis J. Spellman, D.D., Archbishop of New York, secretary. Episcopal chairmen of the various departments were elected as follows: Catholic Action Study—Most Rev. John T. McNicholas, O.P., D.D.; Lay Organizations—Most Rev. John F. Noll, D.D.; Press—Most Rev. John M. Gannon, D.D.; Legal—Most Rev. Hugh C. Boyle, D.D.; Youth—Most Rev. John A. Duffy, D.D.

The Administrative Board, deputed by the Hierarchy, issued a statement on the war situation on November 15, entitled, "The Crisis of Christianity."

Most Rev. Hugh C. Boyle, D.D., reporting for the Legal Department cited the cooperation of the Department with Catholic institutions in the matter of meeting difficulties presented by priorities allocation under the National Defense Act. "In one case", the report said, "a manufacturer of religious articles was threatened with the destruction of his business because of his inability to secure required metals. Consultation with officials of the OPM has resulted in satisfactory consideration of the problem involved." Similar consultation has proved satisfactory with regard to materials required by buildings of Catholic institutions being constructed or about to be constructed; a survey of these needs is being made, including supplies, repairs and maintenance. The Legal Department collaborated in perfecting and filing articles of incorporation for the National Catholic Community Service and is in close touch with the legal aspects of its operations.

By authorization of the Hierarchy in its annual Meeting, the Administrative Board of the National Catholic Welfare Conference appointed a committee to promote the study and dissemination of the peace points of Pius XII. The committee consists of Most Rev. Samuel A. Stritch, D.D., Archbishop of Chicago; Most Rev. James H. Ryan, D.D., Bishop of Omaha; and Most Rev. Aloisius J. Muench, D.D., Bishop of Fargo.

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Most Rev. Edward J. Mooney, D.D., Archbishop of Detroit, presented to the Meeting of the Hierarchy in November the report of Most Rev. Michael J. Ready, General Secretary of the National Catholic Welfare Council on the work of the NCCS (National Catholic Community Service), of whose Board of Trustees he is also Secretary. Of 170 USO clubs in operation, 51 are being conducted by the NCCS and 10 by the Women's Division. Clubs about to be opened number 46 not including 6 to be opened by the Women's Division. Four other clubs are operating with local funds in New York, Chicago, Washington, and Los Angeles. The NCCS is charged with opening nine of the proposed 39 USO clubs for colored troops and has opened four. Report is as of October 27.

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Seventy Archbishops and Bishops and four thousand delegates attended the 7th National Congress of the Confraternity of Christian Doctrine at Philadelphia during the week of November 16th. The Congress was opened with a Pontifical Mass, celebrated by His Eminence Dennis Cardinal Dougherty. The sermon was preached by His Excellency Most Rev. Amleto G. Cicognani, D.D., Apostolic Delegate and Archbishop of Laodicea. Most Rev. Edwin V. O'Hara, D.D., is chairman of the Episcopal Committee of the Confraternity, and Rev. Cornelius Collins, director of the National Center of the Confraternity.

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The First Communion Catechism, for children in the grades, the third in a graded series, has just been published by the Episcopal Committee of the Confraternity of Christian Doctrine composed of Most Rev. John T. Mc-

Nicholas, O.P., D.D., Most Rev. John G. Murray, D.D., and Most Rev. Edwin V. O'Hara, D.D.

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At the 36th annual meeting of the Catholic Church Extension Society, held in Chicago in mid-November, the new Chancellor of the Society, Most Rev. Samuel A. Stritch, D.D., Archbishop of Chicago, was installed. The annual report showed a disbursement of $1,000,000 for missionary activity. The president is Most Rev. William D. O'Brien, D.D., and the Vice-chancellor, Most Rev. Francis C. Kelley, D.D., Bishop of Oklahoma City and Tulsa.

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Almost a half million dollars was distributed among sixty-five mission dioceses in the United States and its dependencies at the annual meeting of the American Board of Catholic Missions held in Chicago on November 6. The members of the Board are: Most Rev. Michael J. Curley, D.D.; Most Rev. Hugh C. Boyle, D.D.; Most Rev. John J. Swint, D.D.; Most Rev. Francis C. Kelley, D.D.; Most Rev. John F. Noll, D.D.; Most Rev. Thomas H. McLaughlin, D.D.; Most Rev. William D. O'Brien, D.D. (secretary), and Most Rev. Richard J. Cushing, D.D.

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A three-day celebration of the tercentenary of the founding of the Sulpician Fathers and the sesquicentennial of their arrival to found St. Mary's Seminary was opened on November 10 with a Pontifical Mass celebrated by the Most Reverend Apostolic Delegate. Most Rev. John M. McNamara, D.D., preached. More than a hundred members of the Hierarchy attended. Pope Pius XII sent his congratulations and Apostolic Benediction. His Eminence Dennis Cardinal Dougherty pontificated at Solemn Benediction of the Most Blessed Sacrament on Tuesday afternoon after the laying of the cornerstone of the chapel of the Seminary at Roland Park by Most Rev. Michael J. Curley, D.D. At the ceremonies of November 11 Governor Herbert R. O'Conor of Maryland and Mayor Howard W. Jackson of Baltimore assisted.

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Two members of the South American Hierarchy joined with Central and South American diplomats and United States Government officials in St. Patrick's Church, Washington, D. C., November 20, as a Pontifical Mass, the 32nd annual Pan-American Mass of Thanksgiving, was celebrated by Most Rev. Michael J. Curley, D.D., Archbishop of Baltimore and Washington. The sermon was preached by Rev. James A. Magner, procurator of The Catholic University of America.

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Most Rev. Aloisius J. Muench, D.D., Bishop of Fargo, was elected president of the National Catholic Rural Life Conference on October 7, at the annual meeting of the board of directors in conjunction with the 19th annual convention of the Conference. He succeeds Most Rev. Vincent J. Ryan, D.D., Bishop of Bismarck.

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The quinquennial national Congress of the Third Order of St. Francis was held in Pittsburgh in mid-October, opening on Saturday October 15 with a

Pontifical Mass celebrated by Most Rev. Hugh C. Boyle, D.D. Most Rev. Christian H. Winkelmann, D.D., of Wichita, preached the sermon. Most Rev. Thomas H. McLaughlin, D.D., Bishop of Paterson, attended the sessions.

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The Chaplain's Aid Association held its annual meeting in mid-November in the Military Chancery Office in New York. Most Rev. John J. Mitty, D.D., Archbishop of San Francisco and president of the Association presided.

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The 27th annual convention of the National Conference of Catholic Charities was held at Houston, Texas, October 19-22.

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His Eminence William Cardinal O'Connell, Archbishop of Boston, observed on November 27th, the thirtieth anniversary of his elevation to the Cardinalate. Ordained June 8, 1884, he became Bishop of Portland in 1901, and Coadjutor of Boston in 1906, succeeding to the See, August 30, 1907.

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On September 8, Most Rev. Joseph Schrembs, D.D., observed the twentieth anniversary of his installation as Bishop of Cleveland.

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His Eminence Johannes Adolf Cardinal Bertram, Archbishop of Breslau and president of the Fulda Conference of the German Hierarchy, has just celebrated the sixtieth anniversary of his priesthood at the age of 82. He became Bishop of Hildesheim in 1906, Archbishop of Breslau in 1914, and Cardinal *in petto* in 1916, confirmed in 1919.

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On October 12, the Diocese of Salt Lake City observed its golden jubilee.

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Most Rev. Francis J. Spellman, D.D., blessed and formally opened the $3,000,000 Cardinal Hayes Memorial High School on September 8.

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On July 7 a conference of the Capuchin Religious Pastors working in the archdioceses of New York and Milwaukee, and in the dioceses of Brooklyn and Green Bay was held at Garrison, New York. The conference was called by the Very Rev. Theodosius Foley, O.F.M.Cap., Minister Provincial of the Capuchin Province of St. Joseph. Papers and discussions dealt with the civil incorporation of religious property, the observance of diocesan and religious regulations, and the duties of the religious pastor according to the Code. Though the meeting was immediately practical in scope, an effort was made to determine the exact juridical character of religious parishes served by the friars in the United States, and consideration was also given to certain disputed canonical questions arising out of canons 609, § 1, and 630, § 4.

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A west wing is being added to the Bishop's residence in Erie, to serve as a Chancery containing offices for the chancellor, the director of charities, and the Bishop's secretary on the first floor, and an office and study for the Bishop on the second.

Most Rev. Thomas A. Connolly, D.D., Auxiliary of San Francisco, blessed on September 28, the new Catholic chapel at Fort Winfield Scott, San Francisco.

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The Summer Session at St. Edward's Seminary, Kenmore, Washington, offers advanced courses in canonical legislation governing the solution and procedure of matrimonial cases. Special attention is given to the proper preparation and presentation of such cases and to matrimonial procedural law. During the Summer Session of 1941 the course included the entire legislation concerned with the ordinary matrimonial process in the diocesan court according to Code of Canon Law, Book IV, and the *Instructio* of the Sacred Congregation of the Sacraments, August 15, 1936. The Summer Session of 1941 was the second in a series of three to cover the entire law governing the procedure in matrimonial causes.

Only ordained priests are admitted. They reside at the Seminary during the entire session. The Session opened June 16, and closed July 3.

DISPOSITION OF COURSE MATERIAL

First Year

Course 1.—Pastor's attitude toward marriage cases. Course 2.—Cases coming under 1990—impediments included. Course 3.—Practical cases—with a view primarily to review marriage law of impediments, consent, form, but including also the more practical sections of the process.

Second (1941) *Year*

Course 1.—The ordinary matrimonial process. *Libellus, citationes, contestatio litis, probationes, discussio et publicatio causae, sententia, appellatio.* Professor: Rev. P. J. Lydon, D.D.

Course 2.—Duties of the members of the court. Officialis, Defensor Vinculi, Promotor Justitiae, Advocati, Procuratores, Notarii. Professor: Rev. J. L. Wolter, J.U.D.

Course 3.—Procedural practice. Composition of *acta processus et causae.* Sessions and minutes. Study of Rota decisions. Mock trial. Professor: Rev. J. H. Brennan, J.C.D.

Required texts: *Codex Juris Canonici. Instructio S. Cong. de Discip. Sacr.* Aug. 15, 1936. Doheny: *Canonical Procedure in Matrimonial Cases; Practical Manual for Marriage Cases.*

Third Year

Course 1.—Special cases—Helena case; *ratum sed non-consummatum; vinculum naturale;* decree of separation. Course 2.—other points of legislation—Prenuptial investigation; convalidation, (simple and *sanatio*); censures (those that are more common), rights and duties of pastors; suspension *ex informata.* Course 3.—Practical course in preparing these cases.

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On December 11 there was inaugurated by the Catholic Students' Mission Crusade a series of weekly radio broadcasts to South America.

The petition in the Cause of "The Martyrs of America", 111 in number, has been dispatched by His Eminence Dennis Cardinal Dougherty to His Eminence Carlo Cardinal Salotti, Prefect of the Sacred Congregation of Rites. The catalogue of merits was prepared by Most Rev. John M. Gannon, D.D., with the aid of a committee of scholars, including Rt. Rev. Msgr. Peter Guilday, Ph.D., of The Catholic University of America.

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"Review for Religious" is the title of a new bi-monthly magazine which will appear January 15 under the editorship of a board of the Jesuit School of Theology at St. Mary's College, St. Mary's, Kansas. It will be an ecclesiastical review for religious. The editorial board consists of Rev. Adam C. Ellis, S.J., professor of Canon Law; Rev. G. Augustine Ellard, S.J., professor of Ascetical Theology; and Rev. Gerald Kelly, S.J., professor of Moral Theology.

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On December 15, 10,000 parochial schools observed Bill of Rights Day, commemorating the sesquicentennial of the ratification of the first ten amendments to the Constitution. The action was sponsored by the Office of Civilian Defense and the Department of Education of the National Catholic Welfare Conference.

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Most Rev. Vincent Wehrle, O.S.B., D.D., retired Bishop of Bismarck, died November 3 at the age of 85 and was buried after a Pontifical Requiem Mass celebrated by Most Rev. Vincent J. Ryan, D.D., Bishop of Bismarck. The sermon was preached by Most Rev. John G. Murray, D.D. Interment took place at Assumption Abbey, Richardton, North Dakota, which Bishop Wehrle had founded in 1902.

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Most Rev. Thomas Heylen, D.D., Bishop of Namur, and president of the Permanent Committee of International Eucharistic Congresses, died at the end of October at the age of 85. He was a priest sixty years and had been Abbot of the Premonstratensian Abbey in Tongerloo, Belgium.

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Most Rev. Martin Meulenberg, Vicar Apostolic of Iceland, is dead at the age of sixty-eight. He was consecrated in Reykjavik July 25, 1929, by Cardinal Van Rossum; his Titular See was Holar, ancient Iceland Diocese before the "Reformation".

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Most Rev. Louis J. A. Melanson, D.D., first Archbishop of Moncton, died in late October at the age of 62. He was named Bishop of Gravelbourg in 1932 and Archbishop of Moncton in 1936.

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100 years ago Bishop Peter J. Kenrick was raised to the See of St. Louis.

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75 years ago, President Andrew Johnson and the Mayor of Washington were present at the closing of the Second Plenary Council of Baltimore.

75 years ago Governor Fletcher of Missouri remitted fine and apologized to priest convicted of violating law which required special oath of loyalty from ministers of religion.

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50 years ago Most Rev. Theophile Meerschaert, D.D., was consecrated in the Cathedral of Natchez, the first Vicar Apostolic of Oklahoma and the Indian Territory.

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40 years ago Most Rev. Eugene A. Garvey, D.D., was consecrated first Bishop of Altoona.

UNIVERSITY

DISSERTATIONS—1942

Some twenty-five candidates for the doctorate in Canon Law are presently engaged in the last stages of their dissertations. Tentatively the list of titles on which dissertations are being prepared is as follows.

1. The Cloister
2. Religious Houses of Study
3. Moral Certitude in "Cautiones"
4. "Conversi" in Religious Institutes
5. The Profession of Faith
6. Common Law Marriage
7. The Time and Place of Marriage
8. The "Missa pro Populo"
9. Cooperation in Crime
10. Clerical Pensions
11. Desecration of Churches
12. Peregrini
13. Reserved Benefices
14. Abortion
15. Canon 1127
16. Absolutio Complicis
17. The Subject of Ecclesiastical Law
18. The Dismissal of Religious of Temporary Profession
19. The Chancellor
20. Apostasy from a Religious Institute
21. Mortgages
22. The Choral Obligation of Religious
23. The Minister of Baptism
24. De Fide Instrumentorum
25. The Interpellations
26. The Observance of the Sunday Precept

VISIT TO THE CHANCERIES OF THE ARCHDIOCESE OF NEW YORK, OF THE DIOCESE OF BROOKLYN, AND OF THE MILITARY VICARIATE

Nearly fifty of the priest students of the School of Canon Law of the University attended the meeting of the Canon Law Society of America in Hotel Pennsylvania on November 9. On the following morning at the invitation of the Most Reverend Chancellor, they visited the Chancery of the Archdiocese of New York. In the Chancery of the Military Vicariate, on the same morning, Rev. Robert E. McCormick, J.C.D., Chancellor, gave a practical demonstration of Chancery procedure. A similar courtesy was extended them in the Chancery of Brooklyn in the afternoon by His Excellency, Most Rev. Raymond A. Kearney, D.D., J.C.D., and the Very Rev. Msgr. James H. Griffiths, S.T.D. The School of Canon Law is deeply indebted to these dignitaries for their gracious cooperation in the practical instruction of its students.

MODEL CHANCERY

Begun in the Fall of 1941 as an experiment, the model chancery of the School of Canon Law has proved its value and will continue as a seminar institute for the students of the School. Six hundred cases passed through the chancery last year and four hundred of these have been gathered together into a seminar manual for use in the chancery. To each case is appended the canons which have a bearing on its solution. Two appendices are included: one a concordance between the canons and the cases; the other, a concordance between the canons and the decrees of the Councils of Baltimore. The cases in the manual are in English. They are transcribed into Latin by the appointed petitioners. The solution is written in Latin and handed to the Faculty for correction.

Cases are presented, six a day, by the students of the first and second year classes. The acting chancellors are also appointed in rotation, one for each day. They are selected from the second year students until March first; and from the third year students, after that date. Each second year student serves three turns as chancellor and in addition presents some twelve cases throughout the year. The same number of cases is presented by each first year student. The students of the third year serve only on turn as chancellor.

ALUMNI OF THE SCHOOL OF CANON LAW

Rev. Joseph B. Brunini (J.C.D. 1937) has been named Chancellor of the Diocese of Natchez.

Rev. John J. Coleman (J.C.D. 1941) has been named Rector of the Cathedral of Spokane.

Rev. Anthony A. Esswein (J.C.D. 1941) has been appointed to Chancery work in the Archdiocese of St. Louis.

Rev. Edward L. Heston, C.S.C. (J.C.D. 1941) is teaching moral theology at Holy Cross College, Brookland, D. C.

Rev. James J. Hogan (J.C.D. 1941) is assistant chancellor of the Diocese of Trenton.

Rev. Charles A. Kerin, S.S. (J.C.D. 1941) is teaching Canon Law at St. Edward's Seminary, Kenmore, Washington.

Rev. William F. Louis (J.C.D. 1941) is Chancellor of the Diocese of Paterson.

Rev. Gilbert J. McDevitt (J.C.D. 1941) is teaching at St. Thomas More High School, Philadelphia.

Rev. Thomas J. McDonough (J.C.D. 1941) is Officialis of the Diocese of St. Augustine.

Rev. Andrew L. Slafkosky (J.C.D. 1941) is teaching at the Central Catholic High School, Allentown, Pa.

Rev. Michael J. Keene, O.S.B. (J.C.L. 1941) is teaching moral theology at St. Meinrad's Seminary, St. Meinrad, Indiana.

Rev. Harold J. Bolton (J.C.L. 1941) is Vice Official of the Diocese of Saginaw and Secretary to the Bishop.

Rev. Thomas P. Duffy (J.C.L. 1941) is Chancellor of the Diocese of Nashville and Rector of the Cathedral.

Rev. John A. Richmond, S.M. (J.C.L. 1941) is teaching dogmatic theology at the Marist College, Brookland, D. C.

Rev. James K. Spurlock (J.C.L. 1941) is Officialis of the Diocese of Leavenworth.

Rev. Joseph J. Comyns, C.SS.R. (J.C.L. 1938) is teaching Canon Law at the Redemptorist House of Studies, Esopus, N. Y.

Rev. Vincent F. Alfes (J.C.L. 1940) and Rev. Adolph A. Oser (J.C.L. 1941) supervise the informal matrimonial cases of the Diocese of Lansing.

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The Most Reverend Rector spoke over a nation-wide hook-up on Sunday, November 9, on the Church of the Air Program of the Columbia Broadcasting System, pointing especially towards the imminent danger of radicalism in the days of reconstruction due to the exiling of Christ especially from university training.

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On December 8, the Most Reverend Rector celebrated a Pontifical Mass in the Shrine of the Immaculate Conception. The sermon was preached by Very Rev. Charles J. Costello, superior of the Oblates of Mary Immaculate.

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Rev. Francis J. Connell, C.SS.R., associate professor of moral theology at The Catholic University of America, testified before a subcommittee of the House District Committee considering H. R. 4786, a bill requiring applicants for marriage licenses in the District of Columbia to submit a physician's certificate testifying to the absence of infectious venereal disease and tuberculosis. Father Connell said that if the enactment of some control measure is unavoidable, it would be better not to prohibit the issuance of a marriage license but merely to require that the parties be informed of the presence of the disease. Prohibition of the issuance of a license would restrict unduly even the natural right to marriage.

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40 years ago Bishop Thomas J. Conaty, D.D., rector of The Catholic University of America, was consecrated in the presence of twenty members of the Hierarchy.

DIGNITIES

Most Rev. Laurence J. FitzSimon was consecrated third Bishop of Amarillo in San Fernando Cathedral, San Antonio, on October 23, by the Most Reverend Apostolic Delegate. Co-consecrators were Most Rev. Mariano S. Garriga, D.D., Coadjutor of Corpus Christi, and Most Rev. Sidney M. Metzger, Auxiliary of Santa Fe. The sermon was preached by Most Rev. Robert E. Lucey, D.D., Archbishop of San Antonio, who, before the consecration of Bishop FitzSimon, was invested with the Sacred Pallium by the Most Reverend Apostolic Delegate.

On November 27 it was announced that the See of Denver had been made an archiepiscopal See with suffragans, the Diocese of Cheyenne and the newly formed Diocese of Pueblo.

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On September 3 Most Rev. Joseph F. Rummel, D.D., Archbishop of New Orleans, attended as a member of the President's Advisory Committee for Political Refugees a meeting at the White House.

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On June 11 Most Rev. Edward Vincent Byrne, D.D., Bishop of San Juan, Puerto Rico, was made Assistant at the Papal Throne.

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Rt. Rev. Msgr. Daniel J. O'Beirne, formerly Chancellor of Natchez, has been appointed to the pastorate of St. Paul's Church, Vicksburg, and has been made Vicar General of the Diocese.

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Rev. Edward D. O'Connell, S.T.L., Ph.D., pastor of St. Anthony's Church, Utica, N. Y., became rector of Mount St. Mary's Seminary, Emmitsburg, Md., in September.

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Rev. Ulric Beste, O.S.B., rector of the Benedictine College of San Anselmo, has been appointed a consultor of the Supreme Congregation of the Holy Office.

THE CANON LAW SOCIETY OF AMERICA

The third annual meeting of the Canon Law Society came to a close with participation by the members in the dinner-meeting of the Alumni Association of The Catholic University of America, held in New York City, Sunday, November 9.

The first meeting was held in Washington in connection with the observance of the Golden Jubilee of The Catholic University of America, at the invitation of the Most Reverend Rector. The invitation was extended to persons interested in Canon Law, chiefly priests, and brought together an attendance of sixty. This was increased to ninety in attendance at the second meeting, and more than a hundred at the meeting of 1941. The present membership is over two hundred.

The Constitution and By-laws were adopted at the first meeting. Under the Constitution, the term of office of the President and Vice President is limited to one year. The first president was Very Rev. William Doheny, C.S.C., J.U.D., assistant Superior General of the Congregation of the Holy Cross and advocate of the Sacred Roman Rota. The second president was Very Rev. Edward Dargin, J.C.D., Officialis of the Archdiocese of New York.

The officers elected for 1941-1942 are: Very Rev. Msgr. James H. Griffiths, S.T.D., Vice Chancellor of the Diocese of Brooklyn, president; Rev. C. Bernard Alford, J.C.D., vice president; Very Rev. Thomas J. Tobin, S.T.D., J.C.D.,

Chancellor of the Archdiocese of Portland, general secretary; Rev. Gerald A. Ryan, J.C.D., instructor in the Department of Religious Education of The Catholic University of America, recording secretary; Rev. Clement Bastnagel, J.U.D., associate professor of Canon Law at The Catholic University of America, treasurer.

Dr. Gerald A. Ryan, reporting as treasurer of the current year, stated that two hundred sets of dissertations had been mailed to members of the Society. The sets were not complete, because only thirteen of the twenty-one dissertations submitted to the Faculty of Canon Law in June were in print to date. The remaining eight were expected within two or three months and would be mailed to members when received. The delay was caused by the difficulty in obtaining printing service for so great a number of dissertations.

Dr. Ryan reported that some twenty-five dissertations were expected in June 1942 by the Faculty of Canon Law. He was of the opinion that it would not be possible to supply so great a number for the payment of seven dollars dues and suggested a maximum number of twenty at the option of the members. His reason for this suggestion was that this year the funds were just sufficient to meet the cost of twenty-one dissertations based on the average bill paid for the dissertations already received from the graduates. Members who pay two dollars dues would be supplied with five dissertations as in the past.

He also emphasized the importance of payment of dues on or before May first, or at least an indication that payment would be made later. The Society can not ask the graduates to supply it with more dissertations than it actually needs, and it must inform the graduates by May first of the number needed.

He pointed out, also, that the subscription stipend for THE JURIST, the quarterly publication of the School of Canon Law of The Catholic University, sponsored by The Canon Law Society at its first annual meeting and supported by it, is payable to the Business Manager of THE JURIST and that the seven dollars dues does not include a subscription to THE JURIST.

A tentative list of dissertations to be published in 1942 is contained in this number of THE JURIST under chronicle of the University.

The Very Rev. President announced that he had received a favorable answer to his request that Rev. Francis B. Donnelly, M.A., S.T.L., J.C.D., should read the paper at the next annual meeting of the Society, the subject to be chosen by Dr. Donnelly and to be announced prior to the meeting.

Dr. Dargin, prior to his retiring from the presidency, advocated a series of sectional meetings to be scheduled for various dates throughout the year, and Monsignor Griffiths, on assuming the duties of the presidency, expressed his intention of cooperating with the members of the Society in the respective sections of the country to bring this about.

The question of the amount of dues to be assessed against those members desiring all the dissertations of 1942 was referred to the Executive Committee.

Representing the Faculty of Canon Law of The Catholic University of America, Dr. Hannan reported on the progress of THE JURIST. He thanked

the Society at large and the individual members for the moral and financial support given the quarterly and invited literary contributions from all. He said that the quarterly began publication in January 1941 with a pledged list of five hundred subscribers. Circular letters were sent to all the priests of the country after the first number appeared. This appeal increased the subscription list to eleven hundred. He listed some of the libraries in which it was being received, among them: The Vatican Library; The Law Library of the Library of Congress; the Library of the Department of Justice of the United States; the New York State Library; the Minnesota State Library. The law libraries of some twenty non-sectarian universities are also receiving it; and the libraries of nearly one hundred seminaries and houses of studies.

The meeting was honored by the presence of Most Rev. Thomas A. Connolly, D.D., J.C.D., Auxiliary Bishop of San Francisco.

PAPER AND DISCUSSION

Prior to the business meeting of the Society, the paper which was promised at the 1941 meeting, was read by Rev. C. Bernard Alford, J.C.D. Its subject was " Common Law Marriage in relation to the Code of Canon Law ". This paper will be published in its entirety in a subsequent number of THE JURIST. It was a brilliant exposition of a difficult subject. Dr. Alford in addition was equal to the numerous questions which confronted him at the end of his paper. Joining in the discussion were Very Rev. Edward Dargin, J.C.D.; Very Rev. Msgr. James H. Griffiths, S.T.D.; Rev. Robert E. McCormick, J.C.D.; Rev. James P. Kelly, J.C.D.; Rev. James B. Roberts, J.C.D.; Rev. Richard Kearney, J.C.D.; Rev. Francis B. Donnelly, M.A., S.T.L., J.C.D.; and Very Rev. H. Louis Motry, S.T.D., J.C.D., Dean of the School of Canon Law of The Catholic University of America.

THE RICCOBONO SEMINAR OF ROMAN LAW IN AMERICA

I. (a) Date: October 15, 1941.

(b) Title: Roman Law and the Dispute about Ancient Economy.

(c) Author: Dr. Edgar Bodenheimer. Attorney in the office of the Solicitor of the Department of Labor, J.U.D. (Heidelberg, Germany).

(d) Abstract:

Dr. Bodenheimer showed that the character of the ancient economic system has been and still is the subject of considerable dispute among scholars. Certain historians and economists believe that the economic order of the Greeks and Romans, throughout the entire period of ancient history, was based on a rather primitive form of home economy. But others are convinced that the Greeks and Romans had a highly developed industrial system comparable to our own. This profound disagreement may, among other reasons, be explained by the fact that the ancient historical sources furnish scant information about economics.

I. (a) Date: November 26, 1941.

(b) Title: Roman Law Procedure and the Papal Curia in the Twelfth Century.

(c) Author: Stephan G. Kuttner, of the Canon Law School of the Catholic University of America, J.U.D. (University of Berlin). He was formerly Associate Professor of the History of Canon Law in the Pontifical Institute *Utriusque Juris* from 1937 to 1940. He did research work in this field at the Vatican Library from 1934 to 1940. Dr. Elio Gianturco of the Library of Congress began the discussion from the floor.

(d) Abstract:

The paper discussed a recently discovered letter written about 1180 A. D. by Cardinal Vivianus, who in his day was an outstanding canonist of the Papal Curia. An analysis of this letter *de appellationum prohibitionibus* showed how the lawyers of the Pontifical Court in the twelfth century were indebted deeply to Roman legal thought on questions of judicial procedure and particularly how they were influenced by the writings of the contemporary glossators of the Roman law.

A study of the work of Cardinal Vivianus illustrates the remarkable fact that the intellectual appropriation of Roman law in the schools of the glossators had its first practical consequences in the ecclesiastical courts rather than in the secular. The paper explained how the officers of the Papal Curia helped to bring about that perfect amalgamation of Roman-Canonical procedure which is characteristic of the Middle Ages.

Professor J. A. O. Larsen of the Department of History, University of Chicago, extended an invitation to all the members of the Seminar to attend a session of the coming meeting, in Chicago, of the American Historical Association devoted to Roman law and Institutions in the Early Middle Ages.

Supplement—THE JURIST

VOLUME 2 JANUARY, 1942 No. 1

SACRA CONGREGATIO
DE DISCIPLINA SACRAMENTORUM

(Cf. sample questionnaire for parties to marriage and general observations at end of Appendix).

INSTRUCTIO

DE NORMIS A PAROCHO SERVANDIS IN PERAGENDIS CANONICIS INVESTIGATIONIBUS ANTEQUAM NUPTURIENTES AD MATRIMONIUM INEUNDUM ADMITTAT (CAN. 1020).

1. Sacrosanctum matrimonii institutum, divinitus inde ab hominum exordio conditum, Nova Lege a Christo Domino ad sacramenti dignitatem evectum, quovis tempore Ecclesia sedulo studuit ne ullius irreverentiae vel nullitatis periculo exponeretur, aptis praestitutis cautionibus eius sanctimoniae accommodatis. Quanta autem et sanctitate et dignitate christianae nuptiae praefulgeant, etiam in memoriam reduxerunt litterae Encyclicae Pii f. r. Papae XI *Casti connubii* die 31 decembris anno 1930 editae,[1] quae coniugalis consortionis germanam naturam, nobilissimas praerogativas, praeclaros fines egregie recolere sategerunt.

2. Neminem latet gravem in sacramentum iniuriam committere, ideoque nec levi commaculari crimine, nupturientes qui ad matrimonium accedant haud servatis praeceptis ab Ecclesia naviter statutis ut christianae nuptiae licite, et praesertim valide, ineantur aptaeque praeterea evadant ad uberes sacramenti fructus comparandos. Et quidem iniuriam hanc atque culpam participant etiam administri Ecclesiae, qui nupturientes, etsi inconsiderate tantum, ad celebranda vetita connubia admittunt, graviter neglecto officio sibi commisso accurate explorandi ne contra SS. Canonum statuta eadem nectantur.

Ad rem Ecclesia onus commisit animarum Praesulibus impertiendi parochis sibi subiectis idoneas normas pro investigationibus sedulo et opportuno tempore peragendis, ne matrimonio ineundo aliquid obstet; itemque ut, si reapse

[1] *Acta Ap. Sedis,* vol. XXII, pag. 539 seq.

impedimenta adsint, actuose studeant ea auferre aut secus nupturientes infecto coniugio dimittant. Tale praeceptum continetur et in can. 1020 Codicis I. C., cuius verba praestat referre:

"§ 1. *Parochus cui ius est assistendi matrimonio, opportuno antea tempore, diligenter investiget num matrimonio contrahendo aliquid obstet.*

§ 2. *Tum sponsum tum sponsam etiam seorsum et caute interroget num aliquo detineantur impedimento, an consensum libere, praesertim mulier, praestent, et an in doctrina christiana sufficienter instructi sint, nisi ob personarum qualitatem haec ultima interrogatio inutilis appareat.*

§ 3. *Ordinarii loci est peculiares normas pro huiusmodi parochi investigatione dare".*

3. Porro nemo ignorat causas, unde initarum nuptiarum invalida aut illicita celebratio dimanat, ad tria capita reduci, nempe:

a) *impedimentum matrimoniale proprie sumptum;*

b) *vitium consensus;*

c) *defectum formae canonicae.*

Gravia igitur incommoda contra sanctitatem christiani connubii praecavere studens, haec Sacra Congregatio, cui, ex statuto can. 249, *proposita est universa legislatio circa disciplinam septem Sacramentorum,* quaeque iam vulgavit Instructionem *super probatione status liberi ac denuntiatione initi matrimonii,* die 4 iulii 1921,[2] apprime opportunum censuit alteram conficere Instructionem, qua adiutricem praebendo manum Revmis Ordinariis, quibus hoc onus ex § 3 relati can. 1020 incumbit, eis suppeditaret idoneas normas ad nupturientium examen rite diligenterque explendum.

Quaestiones, nupturientibus seorsum proponendae, confectae reperiuntur in Appendice (*Alleg. I*) huius Instructionis, salva Ordinario variandi facultate, articulos demendo vel addendo pro matrimoniorum nullitatis aut illiceitatis usitatioribus rationibus, quas in sua dioecesi contingere compererit, spectatis personarum ac temporum adiunctis.

4. At quaedam sunt prae primis adnotanda circa elementa inquisitionis a rel. can. 1020 praeceptae.

a) Quod *ad parochum* attinet: qui habet ius et onus inquirendi, is est cui competit assistentia matrimonio, et hic, nisi iusta causa excuset, *est parochus sponsae* (Can. 1097 § 2). Verumtamen, etiam parochus sponsi, vel proprio marte vel instante sponso ipso vel sponsae parocho, examen peragat ad libertatem sponsi in tuto ponendam, et peractae huius inquisitionis documentum ad sponsae parochum quam primum mittat, una cum ceteris documentis necessariis (testimonio baptismi, etc.) in suo paroeciali archivo forte exstantibus.

Ast, cum parochi sunt diversae dioecesis, documentorum istorum paroecialium transmissio fiat semper per tramitem cancellariae Curiae Episcopalis dioecesis sponsi—cuius insuper erit litteras testimoniales dare de libertate status sponsi—ad sponsae parochum, quoties hic, prout de more, matrimonio assistit: versa vice per cancellariam Curiae Episcopalis dioecesis sponsae id fiat, si quandoque accidat ut matrimonio assistat parochus sponsi.

[2] *Acta Ap. Sedis,* vol. XIII, pag. 348-349.

Haec S. Congregatio autem valde exoptat ut, antequam parochus ad matrimonii assistentiam procedat, licentiam suae Curiae, quam *nihil obstat* nuncupant, consequatur: id vero praecipit cum nupturientium parochi sunt diversae dioecesis.

Quo accuratius in re tam gravi procedatur, Curia Episcopalis prorsus exigat ut parochus, cui licentia (*nihil obstat*) danda est, ad Curiam ipsam mittat opportuno antea tempore documenta omnia praematrimonialia una cum *exemplari,* cuius specimen in Appendice (*Alleg. V*) invenitur, omnibus notitiis ibi requisitis praedito. Hoc autem exemplari, prout in eodem cautum est, utatur sive Curia in concedendo *nihil obstat,* sive parochus in concedenda sacerdoti, legitima ceterum facultate praedito, licentiam assistendi matrimonio extra paroeciam forte contrahendo; illudque dein caute asservetur in archivo paroeciali loci, ubi nuptiae initae sunt.

Munus vero inquirendi parocho *sub gravi* incumbere patet ex gravitate rei; neque a tali onere ipse eximitur, licet moraliter certus sit nihil obstare validae et licitae matrimonii celebrationi. Examen peragatur *personaliter a parocho,* nisi iusta causa excusetur.

b) Quoad *tempus* inquisitionis: haec peragenda praecipitur "*opportuno tempore ante matrimonii celebrationem*" seu, prout res ipsa postulat, ante proclamationes matrimoniales, vel dum hae peraguntur.

c) Quoad *obiectum* autem huius inquisitionis: per ipsam ea omnia exploranda sunt, quae matrimonio ineundo quomodocumque obstare possint. Proinde, praeter quam de iis, quae speciatim enunciantur in § 2 rel. can. 1020, de quibus infra uberius, inquirendum est prae primis:

a) de susceptis baptismo et confirmatione, legitimis eorundem documentis comparatis. *Fides vero baptismi recens esse debet nec ante semestre exarata quam matrimonium ineatur;* et inibi adnotata reperiantur ea omnia quae conscribenda sunt ex statuto can. 470 § 2 et art. 225 Instructionis huius S. Congregationis, quae inscribitur *Instructio servanda a tribunalibus dioecesanis etc., diei 15 aug. 1936* (*Acta Ap. Sedis,* vol. XXVIII, pag. 313 seq.).[3] Affirmationi etiam iuratae nupturientium se baptizatos non esse, facile ne credat parochus nisi aliunde id ipsi certo constet, sed, ad fraudes in re praecavendas, a parocho

[3] Can. 470 § 2. "*In libro baptizatorum adnotetur quoque si baptizatus confirmationem receperit, matrimonium contraxerit, salvo praescripto can. 1107, aut sacrum subdiaconatus ordinem susceperit, vel professionem sollemnem emiserit, eaeque adnotationes in documenta accepti baptismatis semper referantur*".

Art. 225 § 1. "*Ordinarius loci . . . obligatione astringitur iniungendi quantocius rectori paroeciae, ubi matrimonii celebratio est paroecialibus regestis consignata, ut de sententia nullitatis ac de vetitis forsan statutis, ex. gr. in causis impotentiae, in iis faciat mentionem necnon in baptizatorum regesto, si in ea paroecia uterque vel alteruter coniux fuerit baptizatus.*

§ 2. *Rector autem paroeciae tenetur sententiam nullitatis ac vetita forte statuta statim adnotare in praedictis regestis et, si uterque vel alteruter coniux alibi baptizatus fuit, parochum vel parochos loci baptismi collati monere de prolata nullitatis sententia, ac de vetitis forte statutis, ut haec in renatorum libro ipsi adnotent, necnon de iis a se peractis certiorem quam primum reddere proprium Ordinarium*".

loci originis requirat utrum e libro baptizatorum constet hoc sacramentum eis esse collatum; quo in casu et ipsius fidem petat;

β) de paroecia vel paroeciis, quibus celebratum matrimonium debet notificari;

γ) nupturientesne sint aetate maiores an minores;

δ) utrum ambo catholici eorumne alteruter vel uterque acatholicus, ad canonicam tamen formam adstrictus vi can. 1099;

ε) si casus ferat, inquiratur, demum, de obitu praecedentis coniugis; de sententia nullitatis matrimonii et quidem exsecutiva ad normam iuris (*cfr. art. 220, 221 § 3 memoratae Instructionis*),[4] etiam in casibus exceptis (*cfr. ibid., art. 226 seq.*); de dispensatione super matrimonio rato et non consummato: **comparatis ad rem singulis legitimis documentis;**

ζ) quod autem refert ad evincendam libertatem status nupturientium vide infra n. 6.

d) Quoad postremo *modum* explendi examinis: in rel. can. 1020 § 2 praecipitur ut parochus sponsos *seorsum* et *caute* interroget, nempe, ut aiunt Doctores, distincte, separatim et caste, debita prudentia et circumspectione, praesertim cum inquirit de impedimentis aliisque adiunctis, quae infamiam ruboremve ingerere possint.[5]

5. Nupturientium examen, ad normam § 2 rel. can. 1020, tria potissimum respiciat oportet:

a) *absentiam impedimentorum;*
b) *libertatem consensus;*
c) *sufficientem scientiam doctrinae christianae.*

Quoad *primum*: parochus a sponsis percontetur num aliquo detineantur impedimento tum impediente (cc. 1058-1066),[6] tum praesertim dirimente (cc. 1067-1080), sive publico (ligaminis, consanguinitatis, affinitatis etc.), sive occulto, immo hoc potissimum, quod rarius innotescere solet (voti, criminis etc.) (*Alleg. I*).

a) Praecipui connubiorum casus, ad hanc Sacram Congregationem delati pro simplici convalidatione aut pro sanatione in radice, matrimonia respiciunt

[4] Art. 220. "*Post secundam sententiam, quae matrimonii nullitatem confirmaverit, si defensor vinculi in gradu appellationis pro sua conscientia non crediderit esse appellandum, ius coniugibus est, decem diebus a sententiae denunciatione elapsis, novas nuptias contrahendi* (can. 1987)".

Art. 221 § 3. "*In casu autem desertionis* (ex parte defensoris vinculi interpositae appellationis ad tertiam instantiam post alteram sententiam pro nullitate matrimonii), *partibus ius est ad novas nuptias convolare, habita notificatione decreti quo collegium statuerit appellationem desertam* (cfr. can. 1886), *vel peremptam* (cfr. cann. 1736, 1737) *habendam esse*".

[5] Ad rem poterit Episcopus alias praestituere cautelas moribus regionis accommodatas: verbi gratia, prudentis personae praesentiam, quae tamen nupturientium ne sit pater vel mater.

[6] Impedimentum *mixtae religionis*, ex responso Pontif. Comm. ad Codicis canones auth. interpr. diei 30 iul. 1934, ad I, eos quoque afficit qui sectae atheisticae adscripti sunt vel fuerunt (*Acta Ap. Sedis*, vol. XXVI, pag. 494).

celebrata cum impedimento in *secundo consanguinitatis* vel *affinitatis lin. coll. gradu,* aut saepius *consanguinitatis in tertio simplici vel tertio secundum tangente eiusdem lineae gradu,* neglecta canonica dispensatione. Id plerumque accidit ob ignoratum, ideoque non denunciatum a nupturientibus, impedimentum, quod saepe est tribuendum ignorantiae ex diverso statuto legis canonicae et legis civilis, quae altera lex plerumque ignorat recensita impedimenta canonica.

Ad rem, igitur, diligenter inquirat parochus perpendendo, praeter cetera, contrahentium et eorum parentum cognomina, unde saepe consanguinitas colligitur, testimoniaque suscepti baptismi; partibus recolat consanguinitatis et affinitatis gradus iure canonico matrimonio obstantes, et, si earum reticentiam suspicetur, ad tramitem can. 1031 § 1 n. 1°, testes fide dignos et iuratos adhibeat pro huiusmodi accuratiore exploratione (*Alleg. II*).

β) Ad impediendos vero errores, qui quandoque pro dispensatione impetranda a Sede Apostolica irrepunt in computationem gradus impedimentorum consanguinitatis et affinitatis, in precibus addatur *arbor genealogica.*

γ) Vitetur ideo in eisdem precibus aequivoca impedimentorum descriptio, prout haberetur si sponsi, detenti duplici impedimento v. g., consanguinitatis in secundo (maiore) et in tertio (minore) lin. coll. gradu, denunciarentur tamquam ligati impedimento consanguinitatis "secundi-tertii" aut "secundi et tertii" absque addita explicatione: formula enim ista significare potest impedimentum "secundi gradus mixti cum tertio" unicum nempe et minoris gradus: ac proinde dispensatio forte ita impetrata nullitate laboraret.

δ) Praeterea, prout liquet, ad *valorem* dispensationis ab impedimentis maioris gradus requiritur *causa canonica seu iusta, gravitati impedimenti proportionata, reapse in casu exsistens*: ad rem proinde prae oculis habeantur praesertim duae Instructiones, altera diei 9 maii 1877 S. C. de Propaganda Fide, altera diei 1 augusti 1931 huius S. C.,[7] probatique auctores consulantur. Haec ideo causa est exprimenda in precibus pro dispensatione imploranda sive ab Apostolica Sede sive ab Ordinario tali facultate praedito, et dein, dispensatione impetrata, de eiusdem causae exsistentia (quod probe notandum) *certo* constare debet *ante rescripti exsecutionem,* sub periculo irritae dispensationis (can. 38 et 41).

ε) Notatu dignum insuper est, ad *aetatem superadultam,* quae haud semel adduci solet pro muliere, *quae vidua non sit,* requiri *vicesimum quartum annum completum.*

Ceterum semper exprimatur in litteris testimonialibus *aetas* nupturientium a fide baptismi desumenda.

ζ) Demum haec S. Congregatio pro suo munere parochos hortatur ut aptis temporibus in catechesi populo tradenda (can. 1018) fideles rite ipsi edoceant de impedimentis matrimonialibus sive impedientibus sive, praesertim, dirimentibus. Eosdemque avertere conentur, praecipue si arctioribus impedimentis consanguinitatis vel affinitatis detineantur, a nuptiis inter se conciliandis, aut saltem enixe, parentes potissimum, inducant ad impedimenta ipsa auctoritati Ecclesiae denuntianda pro dispensatione, quando peculiaria adiuncta matrimonium nihilominus suadeant: iisdemque explicent haud nimias urgeri taxas,

[7] *Acta Ap. Sedis,* vol. XXIII, pag. 413 seq.

quae titulo ammendae seu poenae imponuntur nupturientium viribus oeconomicis congruentes, easque exiguas prorsus esse pro pauperibus.

6. Ob rei momentum, specialia sunt animadvertenda *de impedimento ligaminis*. Pervigilent parochi ne contra ius, bona vel mala fide, nova coniugalia foedera ineant qui praecedentis matrimonii vinculo vinciantur, etsi de huius valore haud temere ambigatur, immo nullitas ipsa sit in aperto.

α) Praescriptum can. 1069 § 2 optime norint, matrimonii nempe nullitatem *canonica dumtaxat probatione esse evincendam*, id est ordine iudiciali servato usque ad alteram sententiam conformem contra matrimonii valorem a qua appellatum non fuerit a vinculi defensore; vel, in casibus exceptis (can. 1990-1992) expletis regulis traditis in supra memorata Instructione huius S. C. diei 15 augusti 1936 art. 226 seq.

β) Proclamationes peragantur matrimoniales etiam in locis ubi nupturientes per semestre saltem post adeptam pubertatem morati sunt, si id prudenter censeat Ordinarius (can. 1023 § 2), neque ab iisdem dispensetur nisi legitima causa comprobata (can. 1028), neque facile, ceteris neglectis probationis argumentis (*Alleg. II* et *III*), procedatur ad iusiurandum suppletorium (*Alleg. IV*) partibus deferendum (cc. 1829-1830). Iuxta vero praescriptum n. 3 praefatae Instructionis diei 4 iulii 1921, difficultas, quae aliquando occurrit, colligendi nempe congruo tempore necessaria documenta pro statu libero comprobando, plerumque resolvitur documenta ipsa requirendo per dioecesanas nupturientium (uti sub n. 4) cancellarias, quae minuere non omittent etiam taxas solvendas, ad normam can. 1507 § 1 statutas, si exinde et alia difficultas oriatur.[8]

γ) Cautius est procedendum quoad probationem status liberi *vagorum*, eorum nempe qui nullibi domicilium vel quasi-domicilium habent (can. 91), et *eorum, qui e loco originis in longinquas regiones demigrarunt* post adeptam pubertatem, et ibi matrimonium contrahere cupiunt. Ad rem servetur adamussim memorata Instructio huius S. Congregationis diei 4 iulii 1921.

7. Quoad *libertatem consensus*: a sponsis postulet parochus utrum matrimonium libere et sponte inire cogitent, an potius vi aut metu aut importunis precibus vel suasionibus alicuius ad idem compellantur. Id praecipue inquirat a sponsa quippe quae, uti constat, metui sit magis obnoxia. Nec redditis ab iisdem forte negativis responsionibus acquiescat, sed et alias peragat investigationes ad libertatem consensus uberius et securius evincendam. Hoc est magis accurate explorandum, quando nupturientes ad nuptias ineundas inducuntur ut cuidam oborto discrimini medeantur, praesertim ad poenas vitandas exinde civili lege secus obeundas. Probe perpendant parochi unum e praecipuis capitibus nullitatis matrimoniorum, quae ad ecclesiastica tribunalia deferuntur, in vi metuve incusso consistere (*All. I, n. 10, 11*)..

8. Ulterius exploret parochus, nisi personarum qualitas hanc explorationem inutilem reddat, utrum nupturientes *christianam doctrinam* satis calleant, et, prae ceteris, utrum probe noscant sanctitatem et indissolubilitatem christiani connubii obligationesque status matrimonialis. At, si christianae doctrinae eos

[8] Ad nupturientium paroeciam et dioecesim originis dignoscendam hodie praesto sunt libri sic nuncupati *annales ecclesiastici* pro singulis nationibus editi de licentia competentis ecclesiasticae auctoritatis.

ignaros repererit, prima saltem elementa sedulo ipsos edoceat; quod si renuant, non est tamen locus eosdem respuendi a matrimonio ad normam can. 1066.[9]

9. Sponsorum examen id insuper contendat ut grave flagitium illud praecaveatur, quod hodie potissimum ob hominum improbitatem canonicis nuptiis quibusdam in locis incumbit.

Non desunt enim alicubi, praesertim in magnis urbibus, qui, spreta canonica lege, nuptias inire praesumant adiecta aliqua conditione aut intentione, connubii sive suspensiva sive irritativa, quae effugium suppeditare queat ad iugum postea executiendum, novas nuptias conciliandi causa.

Itaque in locis ubi iudicio Episcopi id expedire videatur, in examine nupturientium parochus data opera immoretur et idoneas peragat investigationes, ad rem adhibitis quaestionibus in *Alleg. I n. 15, 16* exaratis, aliisque aptioribus, quas locorum adiuncta et personarum conditiones postulent.

Nupturientes autem omni studio conetur parochus, si casus intersit, advertere ab expositis intentionibus et conditionibus matrimonio adiiciendis eosque inducere ad retractandas forte iam adiectas.

Quoad vero licitae cuiusdam *conditionis* de futuro, de praesenti aut de praeterito *legitimam* appositionem, parochus Ordinarium consulat eiusque pareat mandatis (*All. I n. 17*).

10. Quod demum attinet ad connubiorum nullitatem *ob non servatam canonicam formam,* praecipui casus ad hanc Sacram Congregationem delati reducuntur ad defectum vel *testium* vel *legitimae delegationis* in sacerdote assistente: quorum si primum plerumque inadvertentiae, alterum est et imperitiae, utique culpabili, tribuendum. Probe igitur addiscant oportet sacerdotes, antequam matrimoniis assistant, statuta canonum 1094-1103, quod refert ad validam et licitam eorundem assistentiam, necnon responsiones Pont. Comm. ad Codicis canones auth. interpr. die 14 iulii 1922, 20 maii 1923 et 28 decembris 1927.[10]

11. Conclusionis instar, quae infra recensentur, speciali modo commendat insuper Revmis Ordinariis haec S. Congregatio:

a) In locis ubi id iure concordatario cautum sit, uti v. g. in Italia et in Republica Lusitana, curent ut a parochis documentum de initis connubiis statuto tempore ad officium *status civilis* pro eorundem transcriptione in illius regestis mittatur. In genere autem adamussim ea omnia servari praecipiant, quae concordatario, iure in re matrimoniali servanda sint.[11]

b) Quoties matrimonium initur a nupturientibus, quorum alteruter vel uterque ad aliam paroeciam pertineat, parochus qui matrimonio adstitit,

[9] Cfr. resp. Pontif. Comm. ad Codicis canones auth. interpr. diei 2-3 iunii 1918, IV, de matr. ad 3 (*Acta Ap. Sedis,* vol. X, pag. 345).

[10] *Acta Ap. Sedis,* vol. XIV, pag. 527, V; vol. XVI, pag. 114-115, V et VI; vol. XX, pag. 61-62, IV.

[11] Cfr. pro Italia "*Istruzione circa l'escuzione dell'art. 34 del Concordato . . .*" *1 luglio 1929, n. 29 seq.* (*Acta Ap. Sedis,* vol. XXI, pag. 351 seq.); por Lusitania "*Istruzione agli Eccmi Ordinari del Portogallo . . . sull'esecuzione degli articoli del Concordato . . .*" *21 settembre 1940* (*Acta Ap. Sedis,* vol. XXXIII, pag. 29 seq.).

praeter adscriptionem eiusdem in suo libro matrimoniorum, et, si ibi coniux fuerit baptizatus, etiam in calce actus baptismi, *quam primum* de eodem celebrato commonefaciat parochos vel parochum loci baptismi amborum coniugum vel alterutrius. Hi autem receptas notitias transcribant ad normam can. 470 § 2 in suis renatorum regestis (can. 1103 § 2) et nuntium scriptum de peracta transcriptione mittant ad parochum, qui matrimonio adstitit. Is vero non acquiescat donec hunc nuncium receperit; receptum autem alliget fasciculo documentorum celebrati matrimonii.

c) Omni studio contendant ut sententia exsecutiva nullitatis matrimonii vel apostolica dispensatio a matrimonio rato et non consummato, quantocius denuntientur, cum vetitis transeundi ad alias nuptias ibidem forte statutis, rectori paroeciae, ubi matrimonii celebratio est paroecialibus regestis consignata, ut ab ipso de eadem sententia vel dispensatione necnon de vetitis forsan adnexis scripta mentio fiat tum in matrimoniorum cum in baptizatorum libro, si in ea paroecia alteruter aut uterque coniux fuerit baptizatus; si alter vel ambo sint alibi baptizati, idem rector paroeciae parochum vel parochos loci collati baptismi monere adstringitur de prolata nullitatis exsecutiva sententia vel concessa dispensatione cum vetitis forte statutis, ut isti haec in renatorum libro scripto adnotent. Ipse vero rector de iis a se peractis certiorem quam primum faciat suum Ordinarium.

d) Pervigilent vero ut baptismus fortassis extra paroeciam originis collatus, praeter quam in renatorum regesto paroeciae vel ecclesiae, baptismali fonte iure etiam cumulativo ad normam can. 774 § 1 praeditae, ubi quis reapse eum suscepit, scripto item consignetur libris paroeciae originis. Ad rem quam primum per parochum vel rectorem ecclesiae collati baptismi tradendus est ad rectorem paroeciae originis nuncius scriptus, qui fideliter omnia et singula elementa complectatur quae ad baptismi actum rite conficiendum iure (can. 777) requiruntur.

e) Demum parochis praecipiant ut libros matrimoniorum et baptizatorum diligentissime conficiant atque conscribant: nempe in priore *illico* redigant actum canonicum singulorum matrimoniorum in propria paroecia celebratorum; in posteriore vero, nempe in renatorum libro, ea omnia scripto adnotent, quae can. 470 § 2 iubentur, et in neglegentes animadvertant etiam poenis ad normam can. 2383.

f) Attente inspiciant Ordinarii per crebras visitationes *intra singula semestria,* si fieri potest, et *saltem non ultra annum, faciendas,* uti exoptatur, *personaliter,* vel per idoneas ecclesiasticas personas, utrum paroeciarum rectores regesta paroecialia *matrimoniorum et baptizatorum praesertim,* ad normam iuris, prouti sub littera *c*), conficiant confectaque in archivo rite asservent; *singulos* vero *actus* expendant celebratorum matrimoniorum et collatorum baptismatum eosdemque singulos *quodam apposito speciali signo* communiant, unde de peracta recognitione constet. Quoties vero matrimonio adstiterit sacerdos, qui indiguerit delegatione a iure canonico requisita (can. 1094), Ordinarii ipsi diligenter inquirant utrum necessaria haec in singulis casibus intercesserit delegatio, eaque ad normam iuris impertita.

12. Haec Sacra Congregatio, gravissima incommoda quae ex illicitis atque irritis nuptiis eveniunt prae oculis habens, locorum Ordinarios deprecatur ut, pro sua pastorali sollicitudine, cum parochis traditas cautelas communicent

omnique cura advigilent ut exsecutioni mandentur, canonicasque poenas infligere ne omittant in neglegentes ad normam can. 2222 § 1, haud exclusa suspensione a divinis, praesertim in recidivos, quo tutius nuptiarum rectae celebrationi prospiciatur, cuiusvis offensionis periculo remoto, prout sacramenti matrimonii dignitatem et sanctitatem decet.

De diligenti observantia canonicae matrimoniorum disciplinae hac Instructione digestae et praecipue de peractis visitationibus [uti supra n. 11 *f*)] iidem locorum Ordinarii certiorem *quotannis faciant* hanc Sacram Congregationem per specialem *Relationem* adnectendam relationi *"de tractatione causarum matrimonialium"* ad eandem transmittendae vi litterarum diei 1 iulii 1932.[12]

Ordinarii autem Italiae, qui relationem de tractatione causarum matrimonialium non amplius transmittere tenentur ob noviter instituta tribunalia matrimonialia Litteris Apostolicis Motu Proprio datis a Pio f. r. Papae XI die 8 decembris 1938,[13] de observantia huius Instructionis et de peractis visitationibus referant ad hanc Sacram Congregationem *sub initio cuiuslibet anni.*

Ssmus Dominus Noster Pius divina Providentia Pp. XII, in Audientia Excmo Secretario H. S. C. die 14 iunii 1941 concessa, praefatam Instructionem, ab EE. PP. in Plenariis Conventibus maturo ac diligenti examini iam subiectam benigne approbare dignatus est.

Datum Romae, ex aedibus Sacrae Congregationis de disciplina Sacramentorum, die 29 mensis iunii, in festo Ss. Apostolorum Petri et Pauli, anno 1941.

D. Card. Jorio, *Praefectus.*

L. ✠ S.

F. Bracci, *Secretarius.*

[12] *Acta Ap. Sedis,* vol. XXIV, pag. 272 seq.

[13] *Acta Ap. Sedis,* vol. XXX, pag. 410 seq.

APPENDIX

ALLEGATUM I

(cfr. n. 3, 5, 7, 9 Instructionis)

NUPTURIENTIUM EXAMEN OPPORTUNO TEMPORE ANTE MATRIMONII CELEBRATIONEM PERAGENDUM A PAROCHO.

Revocata in mentem sponsi (sponsae) sanctitate iurisiurandi atque gravitate poenarum, quibus periuri sunt obnoxii, necnon sollemnitate actus explendi, parochus sponsum (sponsam) alloquatur:

Velis invocare Nomen divinum in testem veritatis, tangendo sancta Evangelia, sequenti formula:

"Ego . . . iuro me totam solam veritatem dicturum (-am) super universa re, de qua rogandus (*vel* roganda) ero".

Dein eis deferat quaestiones seorsum, sponso nempe absente sponsa, et vicissim sponsae, absente sponso: [1]

1. Requirantur eius nomen et cognomen, necnon patris et matris, nativitatis locus, aetas, religio et quidem tum sui ipsius tum alterius nupturientis, professio aut civilis conditio. Ut de personae identitate constet, nisi eadem parocho nota sit, requiratur documentum ad hoc rite confectum imaginem ipsius arte photographica expressam referens. Si nondum documenta recepti baptismi et confirmationis prae manibus habeat, parochus interroget utrum haec sacramenta receperit.[2]

2. Utrum matrimonium in facie Ecclesiae cum alia persona inierit et, quatenus affirmative, quomodo fuerit solutum (can. 1069).[3] Si autem suspicetur parochus de praecedentis vinculi exsistentia, in proclamationibus instet et testes fide dignos ac iuratos inducat (*Alleg. II* et *III*) et dumtaxat recurrat ad iusiurandum suppletorium cum ceterae desierint probationes [*cfr. n. 6 β) Instr.*]: cautius vero procedat cum *vagis* atque *opificibus* in regiones dissitas a loco originis *demigratis* (*cfr. n. 6 γ) Instr.*).

[1] Hisce quaestionibus addantur quae particulari iure, v. g. Concordatorum, sunt praescriptae.

[2] Redditae responsioni se baptismum non suscepisse facile ne credat parochus, nisi aliunde id ipsi certo constet, sed a parocho loci originis requirat utrum e libro renatorum constet de collatione baptismi: quo in casu huius fidem petat [*cfr. n. 4 c) α) Instructionis*].

[3] Requiratur authenticum documentum de obitu prioris coniugis, vel sententiae exsecutivae nullitatis matrimonii [*cfr. n. 4 c) ε) et ζ) et n. 6 Instructionis*], vel dispensationis super matrimonio rato et non consummato una cum mentione vetiti forte statuti [*cfr. n. 11 c) Instructionis*].

Quodsi agatur *de privilegio fidei*, serventur statuta cc. 1069 § 1 et 1120-1127 necnon praescripta S. C. S. Officii.

3. In quanam paroecia habeat domicilium vel quasi-domicilium aut menstruam commorationem, viam et numerum domus quam incolit, et a quo tempore ibi moretur.

4. Quibusnam in dioecesibus saltem per semestre moratus sit post adeptam pubertatem [sponsus *post completum decimum quartum annum,* sponsa *post duodecimum completum*]; quamnam ob causam, quamdiu et quanam in paroecia.[4]

5. An valida sponsalia contraxerit cum alia persona, quomodo et quando sint resoluta.[5]

6. Utrum civile quod vocant matrimonium sponsi iam inter se inierint aut cum alia persona, resolutumve sit hoc alterum an non.[6]

7. Utrum inter se adstringantur aliquo et quonam vinculo, consanguinitatis (can. 1076), affinitatis (can. 1077), cognationis spiritualis ex baptismo (can. 768, 1079), cognationis legalis ex adoptione civili (can. 1059, 1080).

Quod ad consanguinitatem et affinitatem vero attinet, parochus recolat gradus lege canonica matrimonio obstantes, et relate ad nupturientes rudiores impedimenta per practica exempla explicet: quod si suspicetur reticentiam impedimentorum, aptis modis reticentiam eripere conetur, praesertim inquirendo in parentum cognomina et testimonia suscepti baptismi necnon ad testes provocando (*Alleg. II; cfr. n. 5 Instr.*).

8. Nisi res aliunde parocho innotescat, prudenter inquirat utrum notorie catholicam fidem abiecerit, etsi ad sectam acatholicam non transierit, an societatibus ab Ecclesia damnatis adscriptus sit (can. 1065); an sectae atheisticae adhaereat vel adhaeserit (*cfr. n. 5 not. 6 Instr.*). Ab alio fonte exquirat an publicus peccator sit et an censura notorie innodatus (can. 1066). Eadem parochus percontetur a sponso de sponsa et vicissim a sponsa de sponso.[7]

9. Diligenter inquiratur utrum sponsi detineantur aliquo alio impedimento impediente vel dirimente: mixtae religionis (can. 1060), disparitatis cultus (can. 1070),[8] aetatis (can. 1067), ordinis sacri (can. 1072), voti et professionis

[4] In casu affirmatae commorationis parochus probationes colligat de statu libero (can. 1023 § 2: *cfr. n. 6 Instr.*). In casu autem de quo in § 3 eiusdem canonis, consulat Ordinarium.

[5] Licet nupturiens sponsalia valide cum alia persona contraxerit, nec ulla iusta causa ab iisdem implendis excusetur, non datur actio ad petendam matrimonii celebrationem, sed dumtaxat ad reparationem damnorum, si qua debeatur (can. 1017 § 3).

[6] Si civile quod vocant matrimonium cum alia persona etiam alteruter tantum attentaverit et resolutum definitive fuerit, resolutionis definitivae huiusmodi requiratur documentum authenticum; si adhuc vero vigeat, consulatur Ordinarius. (*Pro Italia cfr. Instr. H. S. C. 2 aprilis 1909*).

[7] Hisce in casibus, si affirmative respondeatur, parochus se gerat ad normam can. 1065 et can. 1066.

[8] Quoad matrimonia mixta, standum est praescriptis Codicis I. C. et decretis S. Officii.

religiosae (can. 1058, 1073), raptus (can. 1074), criminis (can. 1075),[9] publicae honestatis (can. 1078).

10. Utrum omnino libere et sponte matrimonio consentiant, praesertim mulier, an, contra, ad idem compellantur directe vel indirecte ab aliqua persona. *Ad rem sponsum (sponsam) moneat parochus quam maxime circumspectam et discretam rationem habitum iri revelatae notitiae ita ut nullam molestiam pars inde habitura sit, cuius libertati alio modo succurri forte poterit.*[10]

11. Utrum sponsus (sponsa) noverit an sponsa (sponsus) omnimoda cum libertate matrimonium contrahere consentiat necne: et, hoc altero casu, edicat unde metus vel coactio procedat.

12. (*Si nupturiens vicesimum primum annum nondum expleverit*). An parentes (tutores) matrimonium ineundum norint eique consentiant, secus quasnam ob causas insciis vel invitis parentibus celebrare velit.[11]

13. Percontetur parochus an nupturientes sufficienter instructi sint in doctrina christiana et praesertim in praecipuis matrimonii finibus, iuribus et obligationibus atque, si casus ferat, nefasta placita contra catholicam doctrinam refutet, genuinam Ecclesiae catechesim de hoc sacramento recolendo (*cfr. n. 8 Instr.*).

14. An aliquid et quid actui civili ineundo obstet.[12]

15. Ad fraudes et causas nullitatis matrimonii praecavendas, parochus in locis ubi, Episcopi iudicio, id expedire videatur, utrique nupturienti innuat se pro certo habere ambos matrimonium contrahere velle ad tramitem doctrinae catholicae, prout universim usu fit a fidelibus, nempe unum, indissolubile, ad prolem procreandam ordinatum sine ulla contraria intentione vel conditione; et ad rem responsionem percontetur a sponso tum quod ad ipsum attinet tum quod ad sponsam, et vicissim.

(*Si nupturiens* affirmative *responderit, poterit parochus omittere quaestiones 16-17 et ad ulteriora procedere. Si quod dubium contra aut suspicio ex responsione nupturientis vel aliunde exoriatur eum contrariam intentionem aut conditionem matrimonio adiicere velle, ulterius, prout infra, prosequatur parochus*).

[9] De exsistentia impedimenti *criminis* accuratius, licet prudenter, inquiratur quando constet prolem adulterinam nupturientes suscepisse; aut eosdem detineri impedimento affinitatis; aut alia suspicandi ratio intersit.

[10] Etiam responsioni redditae de absentia cuiusvis coactionis ne acquiescat parochus, sed aliunde percontetur utrum reapse ita res se habeat, et si intersint specialia adiuncta, de quibus sub n. 7 huius Instructionis, accuratissime investiget, etiam per testes, si opus sit (*Alleg. II* et *III*).

[11] Parochus graviter filiosfamilias minores hortetur ne nuptias ineant, insciis aut rationabiliter invitis parentibus; quod si abnuerint, eorum matrimonio ne assistat, nisi consulto prius loci Ordinario (can. 1034) (*Alleg. III*).

[12] Id valet pro locis ubi actus civilis auctoritate publica praecipitur: quo casu parochus, inconsulto Ordinario, nuptiis ne assistat, si quid actui civili ineundo obsit, vel alias de eiusdem civilis actus omissione suspicio subsit.

16. Nupturienti recolet doctrinam Ecclesiae: nempe sponsos, qui ineundo coniugio intentiones[13] et conditiones[14] forte apponant, quae eius valori quomodocumque adversentur, in sacramentum sacrilege delinquere, peccatorum illaqueari propemodum infinita congerie, sed neque posse matrimonium ita contractum nullitatis accusare: demum parochum non posse hisce nuptiis assistere. Dicat insuper apertis verbis reticentiam in hac re nihil prodesse sponsis. Ad rem responsionem requirat.

(*Si nupturiens declaraverit intentiones aut conditiones huiusmodi se adiecisse aut velle adiicere nuptiis ineundis, ad has retrahendas omni studio eum inducat parochus; quod si ille renuat, eum ab ineundo coniugio dimittat. Si contra recedat, mutatae voluntatis declarationem parochus signet in actis. Tum postulet utrum noverit de conditione aut intentione aliqua id genus et quanam forte apposita aut apponenda ab altera parte, et, casu affirmativo, eadem servet cum hac altera parte*).

17. Si uterque vel alteruter nupturiens aliquam conditionem licitam et honestam de praesenti, de praeterito aut de futuro, ineundo coniugio declaraverit se apposuisse aut apponere velle ex qua pendeat matrimonii valor, exquirat parochus prudenterque interroget quomodo de adimpleta conditione ista se certiorem facere intendat: et, si id consequi se velle fateatur ratione, quae inhonesta sit, ab eadem adiicienda eum absterreat vel ad adiectam revocandam inducat; secus a matrimonio celebrando eum prohibeat. Si vero de conditionis implemento certiorem se facere intendat ratione morum honestati consentanea et parochus ipsius conditionis aequitatem agnoverit, ipse Ordinarium consulat eiusque pareat mandatis.

18. An aliud habeat declarandum circa suum matrimonium.

19. In quorum fidem velit igitur sponsus (sponsa) redditas responsiones subscribere:

Loco....die....mense....anno....

L. ✠ S.

Subsignatio sponsi[15] *in uno exemplari.*
Subsignatio parochi.
Subsignatio sponsae[15] *in altero exemplari.*
Subsignatio parochi.

Adnotatio.—Hae iuratae depositiones alligentur actibus peracti matrimonii et transmittantur tribunali ecclesiastico competenti, quoties de valore matrimonii actio instituta fuerit quolibet ex capite.

[13] Nempe si alterutra vel utraque pars positivo voluntatis actu excludat matrimonium ipsum, aut omne ius ad coniugalem actum vel essentialem aliquam matrimonii proprietatem (can. 1086 § 2).

[14] Hae sunt praesertim conditiones de futuro contra matrimonii substantiam, nempe contra tria bona coniugii *fidei, prolis, sacramenti* (can. 1092).

[15] Si nupturiens scribere nesciat aut nequeat, crucis signum apponat et id adnotetur in actis.

ALLEGATUM II

(cfr. n. 5 et 6 Instructionis)

EXAMEN TESTIUM AD COMPROBANDAM LIBERTATEM STATUS NUPTURIENTIUM.

(*Interrogandi sunt duo testes, a parocho cogniti, pro unoquoque nupturiente*: *iidem vero testes pro utroque inservire possunt, dummodo seorsum de unoquoque testificentur*).

Revocata testi sanctitate iurisiurandi atque gravitate poenarum, quibus periuri sunt obnoxii, necnon sollemnitate actus quem est expleturus, parochus testem alloquatur:

Velis invocare Nomen divinum in testem veritatis tangendo sancta Evangelia, sequenti formula:

"Ego . . . iuro me totam ac solam veritatem dicturum super universa re, de qua rogandus ero".

Dein ei deferat quaestiones:

1. Requirantur eius nomen et cognomen, nomen patris, dies, mensis, annus et locus nativitatis, religio, professio, domicilium.

2. Num habuerit notitias, consilia, instigationes circa ea, quae testificari debet.

3. Quonam ante tempore et quomodo cognoverit sponsum (sponsam). Cognoveritne etiam sponsam (sponsum). Quonam ante tempore et quomodo.

4. Quaenam sint nomina et cognomina nupturientium. Ubi nunc habitent, et a quonam tempore. Quamnam professionem obeant.

5. Quibusnam in paroeciis morati sint saltem per sex menses post completum decimum quartum annum (pro sponso) et duodecimum (pro sponsa) et quamnam ob causam.

6. Agnoscatne an nupturiens contraxerit matrimonium religiosum vel civilem celebraverit actum cum alia persona. Quacum. Subsistatne matrimoniale vinculum vel civilis unio.

7. Compertumne habeat utrum nupturientes aliquo impedimento detineantur, publico vel occulto, procedente a consanguinitate, affinitate etc.

8. Sciatne utrum sponsi matrimonialem consensum libere, praesertim mulier, praestent, an ab aliquo compulsi et quare; et utrum ambo verum matrimonium christianum inire velint: unum nempe, indissolubile, proli procreandae ordinatum, absque contraria intentione vel conditione; aut utrum aliquid huiusmodi ab utroque vel alterutro audierit.[1]

9. [*Si ambo vel alteruter contrahens aetate minor sit, nempe infra vicesimum primum aetatis annum* (*can. 88 § 1*)]. Cognoscatne utrum parentes huic matrimonio consentiant; an et quasnam ob rationes dissentiant. Censeatne utrum parentes sint rationabiliter inviti.

10. Nihilne aliud habeat declarandum circa hoc matrimonium.

Loco....die....mense....anno....

L. ✠ S.

Subsignatio testis ...
Subsignatio parochi ...

[1] Scite animadvertatur hanc quaestionem permagni esse faciendam ut nullitas matrimonii praesertim ex capite vis et metus praecaveatur. Redditae responsionis rationem habeat parochus in examine partium: quod si iam peregerit, iterum ad idem easdem vocet.

ALLEGATUM III

(cfr. n. 6 Instructionis)

QUAESTIONES SEORSUM PROPONENDAE PARENTIBUS (TUTORIBUS) NUPTURIENTIS AETATE MINORIS (CAN. 1034), QUANDO PAROCHO CERTO NON CONSTET DE ABSENTIA CUIUSVIS OBSTACULI EX PARTE IPSORUM.

Revocata testi sanctitate iurisiurandi atque gravitate poenarum, quibus periuri sunt obnoxii, necnon sollemnitate actus quem est expleturus, parochus testem alloquatur:

Velis invocare Nomen divinum in testem veritatis tangendo sancta Evangelia, sequenti formula:

" Ego . . . iuro me totam ac solam veritatem dicturum super universa re, de qua rogandus ero ".

1. Requirantur eius nomen et cognomen, nomen patris, dies, mensis, annus et locus nativitatis, religio, professio, domicilium.

2. Perspectumne habeat consilium filii (filiae) sui (suae) matrimonii contrahendi cum . . .

3. Probetne hoc matrimonium, secus quibus de causis ei adversetur.

4. Noscatne utrum aliquo impedimento consanguinitatis, affinitatis, etc., publico vel occulto, detineantur nupturientes. Utrum filius (filia) suus (sua) aliud matrimonium religiosum celebraverit vel civilem inierit actum et quacum (quocum); subsistatne adhuc matrimoniale vinculum, vel civilis unio.

5. Noscatne utrum filius (filia) libere praestet consensum matrimonialem, an ab aliquo compellatur et quam ob causam.

6. An putat filium (filiam) iis pollere physicis conditionibus ut par sit matrimonio ineundo et de matrimonii finibus edoctum (-am) esse.

7. Nihilne habeat addendum quoad hoc matrimonium.

Loco....die....mense....anno....

L. ✠ S.

Subsignatio patris (tutoris) *in uno exemplari.*
Subsignatio parochi . . .
Subsignatio matris *in altero exemplari.*
Subsignatio parochi . . .

ALLEGATUM IV

(cfr. n. 6 Instructionis)

PRO IUREIURANDO SUPPLETORIO RECIPIENDO (QUANDO NECESSARIUM SIT AD NORMAM CC. 1829-1830).

Anno Domini ... hac die ... mensis ... personaliter coram me adfuit domin ... fili ... annorum ... nat ... ac baptizat ... loco ... dioecesis ... ad effectum comprobandi suum statum liberum ineundi matrimonii causa, iuxta ritum S. R. Ecclesiae, cum ... fil ... nat ... in paroecia ... dioecesis ...

Cum supra memorat ... e solo natali abfuerit ab anno ... ad annum ... (*continuo vel interiecto tempore*) et cum commorari ipsi contigerit in loco (locis) ... quin tamen ibi stabilem fixerit mansionem et cum nequeat testes producere habiles ad comprobandam libertatem status, quam servavit in

memoratis locis, nec valeat ad rem exhibere testimoniales litteras illarum Curiarum Ecclesiasticarum, ad easdem supplendas iureiurando admissus est. De sanctitate iurisiurandi necnon de poenis a periùris (can. 2323) et bigamis (can. 2356) incurrendis est monitus ac praeterea certior factus, si ipse periuret, et impedimenta matrimonialia reticeat, non solum nullum atque irritum esse coniugium, verum etiam causam exsistere innumerabilium peccatorum. Coram igitur me subsignato ipse genuflexus ante imaginem D. N. I. C. Crucifixi clara et intelligibili voce emisit hanc sacramenti.

Formulam

Ego ... fil ... (patris) ... (matris) ... officium meum probe perspectum habens dicendi veritatem atque rei, de qua agitur, momentum, haec sancta Evangelia tangens, profiteor et iuro me toto anteacto tempore, quo extra natale solum moratus sum, omnino liberum ac solutum permansisse a quopiam impedimento aut vinculo matrimonii.

L. ✠ S.

Subsignatio nupturientis ...
Subsignatio Ordinarii vel eius delegati.

ALLEGATUM V

[(cfr. n. 4 *a*) Instructionis]

Paroecia ... Dioecesis ...

Status *documentorum Curiae Episcopali exhibitorum pro matrimonio ineundo inter:*

sponsum ...[1]	sponsam ...[1]
filium ... (*nomen patris*).	filiam ... (*nomen patris*).
commorantis in loco ...	commorantis in loco ...
et ... (*nomen et cognomen matris*).	et ... (*nomen et cognomen matris*).
commorantis in loco ...	commorantis in loco ...
professionis (*sponsi*). ...	professionis (*sponsae*). ...
natum loco ...	natum loco ...
dioecesis ...	dioecesis ...
die ...	die ...
baptizatum in paroecia ...	baptizatam in paroecia ...
die ...	die ...
confirmatum die ...[2]	confirmatam die ...[2]
viduum e ...	viduam e ...
domicilium aut commorationem habentem (*sponsum*) in paroecia ...	domicilium aut commorationem habentem (*sponsam*) in paroecia ...

[1] In Italia si nominum intercedat disparitas inter actum baptismi et actum civilem, ambo nomina referantur (*cfr. Istruzione della S. C. della Disciplina dei Sacramenti, 1 luglio 1929, alleg. III, mod. I, nota 1*).

[2] Prout desumitur ab adnotatione in actu baptismi, aut a documento aut a iureiurando.

[3] ...

Publicationes canonicae peractae sunt die ...[4]

Publicationes civiles (*ubi hae iure concordatario praecipiuntur*) peractae sunt die ...[4]

Dispensatio ab impedimento ...

Loco....die....mense....anno....

L. ✠ S.

Parochus

. . . . . .

Visis documentis huic Curiae exhibitis ibique asservatis (Prot. n. ...) . . . . . *nihil obstat* quominus matrimonium, de quo supra, contrahatur, servatis de iure adhuc servandis.

Loco....die....mense....anno....

L. ✠ S.

Cancellarius Curiae

. . . . . .

Ordinarius

. . . . . .

Nihil obstat ex parte parochi infrascripti quominus extra suam paroeciam matrimonio, de quo assistat sacerdos legitima facultate praeditus, servatis de iure servandis.[5]

Loco....die....mense....anno....

L. ✠ S.

Parochus

. . . . . .

Matrimonium, de quo supra, celebratum est die ... mense ... anno ... in ecclesia ... loci ... dioecesis ... coram me infrascripto.

L. ✠ S.

Parochus aut sacerdos delegatus

. . . . . .

Advertatur.—Hic documentorum *status,* notitiis omnibus ibidem requisitis et signis authenticitatis rite munitus, tradatur parocho alienae paroeciae, ubi matrimonium forte celebrandum sit, saltem triduo ante eius celebrationem.

[3] Heic adnotetur unde libertas sponsorum comprobetur, utrum nempe ab examine testium, a iureiurando suppletorio, a documentis viduitatis, sententiae nullitatis, dispensationis super rato, aut a pluribus argumentis simul sumptis, quo in casu haec singillatim enumerentur.

[4] Aut dispensatae.

[5] Uti patet, licentia haec, prout cavetur in can. 1097 § 1 n. 3, conceditur ad *liceitatem tantum* a parocho cui ius esset assistendi matrimonio.

GENERAL OBSERVATIONS

Sources

The present Instruction refers in footnote 2 to the previous Instruction of the same Sacred Congregation as of July 4, 1921—*AAS*, XIII (1921), 348, 349. That Instruction, in turn, refers to the Instruction of March 6, 1911—*AAS*, III (1911), 102. The Instruction of 1921 states that its purpose is to reaffirm the provisions of the Instruction of 1911, lest it might be supposed that the latter had been superseded by the promulgation of the New Code.

There are six provisions in the Instruction of 1921 and four in the Instruction of 1911. In parenthesis beside the proper provision of the Instruction of 1921 will be placed in the following outline the number of the same provision of the Instruction of 1911:

1. (1)—the free state of the parties is to be diligently investigated and the baptismal certificate of each is to be required; these provisions are not to be waived even to prevent concubinage or an attempt at a civil marriage;

2. (2)—notification of the fact of the marriage is to be sent to the pastor where the parties were baptized;

3. —documents involved in nn. 1 and 2 are to pass through the proper chancery;

4. —the Ordinary is to be consulted as to the marriages of all *vagi* and also of all emigrant laborers, except in cases of emergency and particularly *in periculo mortis;*

5. (3)—the pastor of the place of baptism, having detected a previous marriage, is to notify through the proper chancery the pastor who assisted invalidly at the marriage;

6. (4)—Ordinaries are to enforce these provisions even with canonical penalties.

The present Instruction in footnote 7 refers to the necessity of a canonical cause proportionate to the nature of the impediment from which a dispensation is asked. In the body of the Instruction at this point, the Instruction of the Sacred Congregation for the Propagation of the Faith is cited, namely, that of May 9, 1877 (cf. The Jurist, I [1941], 93, 94; *Acta Sanctae Sedis*, X, 291; *Collectanea S. C. de Prop. Fide*, [Romae: 1907], n. 1470). The causes cited in the Instruction of 1877 often do not suffice singly but only in combination. They are *aetas superadulta; angustia loci;* lack of dowry; poverty of the widow; imminent danger of a contested inheritance; the settlement of wars, civil discord, or family feuds; suspect familiarity or concubinage; sexual knowledge with pregnancy and therefore the legitimation of the offspring (this cause seems to be restricted in the Instruction of 1877 to the impediments of consaguinity or affinity); loss of reputation by the woman even though the suspicion is ill grounded, but the suspicion's object seems to be exclusively relations with persons related by blood or marriage; the revalidation of a marriage contracted in good (not bad) faith *coram Ecclesia* (excluded seems to be revalidation of civil attempts); the danger of a mixed marriage or of a marriage before a non-Catholic minister or before a civil magistrate;

the danger of concubinage; the removal of grave scandal; the cessation of public concubinage; the excellence of the petitioner's merits. Public causes would suffice singly, such as, the welfare of the Christian Republic, the return of a non-Catholic family to the Faith, the education of children of a former marriage in the Faith, preservation of a noble family and its estate within the family (in the case of consaguinity), and the avoidance of grave scandal. (Cf. Petrovits, *The New Church Law on Matrimony,* [Philadelphia: McVey, 1926], pp. 129, 130, 184, 263, 264).

At the same point, reference is also made to the Instruction of the Sacred Congregation of the Sacraments, of August 1, 1931 (*AAS,* XXIII [1931], 413 seq.). This Instruction contemplated in particular the marriage of uncle and niece or aunt and nephew, and lamented the casual form of the petitions seeking dispensations from the impediment of consanguinity in this mixed degree of the collateral line. It points out that the private causes are sufficient only cumulatively, and this should be borne in mind by those writing out the petition. Where there is only one cause, petitions should not be sent unless it is a cause which meets canonical requirements or the *praxis* of the Holy See, v. g., the removal of notable scandal; the solution of inheritance controversies; or the rescuing of families from some tragic situation.

In footnote 19, the present Instruction refers to several responses of the Pontifical Commission for the Authentic Interpretation of the Canons of the Code on the question of delegation of competency for marriage. There is a certain overlapping in the responses of July 14, 1922 (*AAS,* XIV [1922] 527) and of May 20, 1923 (*AAS,* XVI [1924], 114, 115). In the following analysis, the number in parenthesis indicates the corresponding response in the earlier set of responses.

1. —Vicar Econome may delegate determined priest for determined marriage;

2. (1)—so may the vicar substitute after approval by the Ordinary without limitation;

3. (3)—so may vicar substitute of religious pastor after approval by Ordinary but before approval of religious superior;

4. (4)—so may the vicar substitute named by the pastor in an emergency if Ordinary has been notified and makes no objection;

5. —as to vicar *adiutor,* provisum in Canon 475, § 2;

6. —as to vicar *cooperator,* provisum Canon 476, § 6.

The second provision of the earlier set of responses answered that the vicar substitute appointed outside the case of emergency can not so delegate before the approval of the Ordinary.

The later set of responses also replied that it is not sufficiently specific delegation when a pastor notifies the superior of a monastery that he delegates as the priest to assist at a particular marriage which is to take place on the following Sunday the religious priest whom the superior shall select to celebrate Mass there on that Sunday.

The responses of December 28, 1927 (*AAS,* XX [1928], 61, 62) take care of subdelegation. They were:

1.—a vicar *cooperator* who has received general delegation from the Ordinary of the place or pastor can subdelegate another determinate priest to assist at a determinate marriage;

2.—a pastor or Ordinary of the place in delegating a certain priest for a definite marriage, can also give him permission to subdelegate another certain priest to assist at the same marriage.

Summary of Instruction

This summary is not meant to relieve the person charged with a knowledge of the Instruction from the obligation of reading it in detail but rather to stimulate his interest in the details. The summary follows the numbers of the Instruction.

1.—The sanctity of the Sacrament of Matrimony is emphasized.

2.—Similar emphasis is placed on the grave fault that is involved in the abuse of it, with the assertion that ministers share the blame. Ordinaries are reminded of their obligation of providing norms to prevent abuse.

3.—The chief causes of invalidity are impediments, lack of consent, defect of form. The Instruction aims to give norms for the interrogation of the parties for the detection of these causes. The Ordinary may modify these norms.

4.—Here are given the elements of the investigation.

a—The investigation is to be made by the pastor of the bride normally, aided by the pastor of the groom, and vice versa. In the Appendix a form is given on which testimony is to be given by one pastor to another, especially where the officiating pastor is given *permission* (*licentiam*) by another. Communication with a pastor in another diocese is to be through the latter's Ordinary (Chancery), and the latter must give an endorsement or *nihil obstat* as to the facts contained in the document made out by the respective pastor (cf. Questionnaire V). The same procedure is desired within the diocese when the parties to be married belong to different parishes.

b—The investigation should be made in good time.

c—The object (and about the elements of this object every pastor should be interrogated to whom the officiating pastor needs to write for information about the baptism of a party to the marriage):

i—baptism and confirmation;
ii—the pastors to whom notice of the marriage should be sent;
iii—whether either party is a minor;
iv—whether either is a non-Catholic;
v—the death of a previous spouse or the granting of an executed decree of nullity or dispensation *super rato et non consummato*.

d—The method: separate interrogation of the parties.

5.—The examination of the parties: a form is to be provided. Aim is to reveal existence of anything contrary to the sanctity of the Sacrament, especially impediments. Many cases where convalidation or sanation is necessary are due to the impediment of consanguinity. Special query on this score.

Pastor is to explain the impediments and to analyze answers, especially on the basis of the names of the ancestors of the parties. He is to explain that money will not be needed for a dispensation, if he suspects untruthful concealment. He is to call in witnesses if he is still in doubt, and these are to be questioned according to Questionnaire II. In asking for dispensations the petitioner should be explicit in enumerating all impediments, especially multiple impediments, drawing a genealogical tree. He must also assign adequate cause for the granting of the dispensation.

6.—As to the impediment of *ligamen.*

a—Former marriage can be declared null only by formal trial unless unquestionable proofs are available for the procedure of Canons 1990-1992.

b—Omission of the banns should be rare; so also the suppletory oath (witnesses of free state are to be heard according to Questionnaire II). Chanceries are to cooperate promptly in the investigation and to remit taxes for testimonials so that the urgency of time will not make either necessary.

c—Here is reenacted the provision of the Instruction of 1921 requiring that the Ordinary be consulted when there is question of the marriage of an emigrant laborer.

7.—As many marriages are claimed to be invalid because of *vis et metus,* the freedom of the parties is to be carefully scrutinized, especially where the marriage seems to be an escape from something, particularly from the penalties of the secular law. Under n. 11 of Questionnaire I, each is to be asked about the freedom of the other and under n. 10 of the same, the parties are to be told that their answer in this matter will be held in strict confidence and they will be protected against retaliation (in the footnote the pastor is warned to hear other witnesses if doubt remains). Under n. 12 of the same, provision is made for the intervention of parental information.

8.—Where the parties are ignorant of Christian Doctrine, they are to be instructed in the elements, but if they refuse to be instructed, they can not be deterred from entering the contract.

9.—As to defective consent, in special localities where this may be prevalent, the Ordinary should require a close analysis of the answers of the parties. If a licit condition is revealed, the pastor should inquire as to the means of verifying it. If the latter are unlawful, he must insist that the condition be abandoned and refuse to assist at the marriage otherwise. If both the condition and the means are licit, the pastor must nevertheless consult the Ordinary.

10.—As to lack of form, the *imperitia* of priests is censured as culpable where this results from improper delegation; and the *inadvertentia,* where it results from lack of proper witnesses. Reference is made to the responses of the Pontifical Commission for the Authentic Interpretation of the Code on the matter of delegation.

11.—Here are contained special points for Ordinaries.

a—The civil register is to be notified where this is required by Concordat.

b—The officiating pastor shall *quamprimum* notify the pastor of the place of baptism (or note in his own baptismal register) and to follow up

the notification until he has been informed that the notice has been inserted in the proper baptismal register.

c—The same obligation attaches as to notification of executed decree of nullity or dispensation *super matrimonio rato et non consummato* as to both matrimonial and baptismal registers. Pastor is to notify Ordinary when these transcriptions have been duly made.

d—The fact of baptism is to be recorded not only where it occurs but also in the parish of origin and notification is to be sent by the pastor baptizing.

e—Penalties are to be inflicted by the Ordinary for the neglect of these notifications and transcriptions.

f—The Ordinary is to make a check every six months preferably in person of the baptismal and matrimonial registers and to mark each item approved. On this occasion, he asks about proper delegation for those marriages where it appears delegation was required.

12.—Ordinaries are to publish these rules to the pastors and to punish the neglect of them under the provisions of Canon 2222, § 1, not excluding *suspensio a divinis* especially for *recidivi*. Ordinaries are to send special report on the observance of these rules with the annual report on the curial handling of matrimonial causes.

Noteworthy Points

1—The identifying photograph required by Questionnaire I, n. 1, where there is doubt as to the identity of a party to the marriage.

2—The investigation of an asserted non-baptism (Instruction, n. 4, c, α).

3—The need of a testimonial of baptism not more than six months old (Instruction, n. 4, c, α).

4—The cooperation of the pastor of the place of baptism in supplying general information relevant to the case (Instruction, n. 4, c, α).

5—The *nihil obstat* required of the Ordinary when the parties belong to different dioceses (Instruction, n. 4, a).

6—Interrogation of witnesses where there is doubt of an impediment, as to *vis et metus* or as to the reasons for the opposition of parents (Instruction, nn. 5, 6, 7; Questionnaire I, nn. 10, 11, 12).

7—Consultation of the Ordinary for the marriage of emigrant laborers (Instruction, n. 6, γ).

8—Consultation of the Ordinary where a licit condition and licit means of verifying it are revealed (Instruction, n. 9, Questionnaire I, n. 17).

9—Notice to be sent that transcripts have been duly made into proper registers (Instruction, n. 11, b, c, d).

10—Semi-annual check on registers by the Ordinary, with a mark on each item (Instruction, n. 11, f).

11—Special annual report to the Holy See (Instruction, n. 12).

TYPICAL FORM

INVESTIGATION OF THE STATE OF FREEDOM OF PARTIES DESIRING TO MARRY

(Each party is to be interrogated separately, and the interrogation thus made to be signed personally by each of the parties—Cf. Instr., n. 3; Appendix, Questionnaire I)

(Explain the nature of oath and penalties for perjury.)

Qu. I. OATH: "I.....swear that I shall tell the truth the whole truth and nothing but the truth as regards everything concerning which I am to be questioned."

Qu. I, n. 1 1. Name: Address:

Date and place of birth

(Photo necessary?)

Instr. n. 10 2. Name of father: His religion:

Qu. I, n. 12 Maiden name of mother Her religion:

Have you consulted your parents about this marriage?

If not, why not?

Instr. nn. 5, 10; Qu. I, nn. 5, 9 3. Were you ever baptized? When? Where?

Have you submitted proof of your baptism (i. e. record or or affidavits of two persons)? If not, why not?

(Note: Pastor should investigate further concerning the *validity* of non-Catholic baptisms here and also into an allegation of non-baptism.)

Instr. n. 8 4. Did you receive First Communion? When? Where?

Confirmation? When? Where?

Instr. n. 6 Qu. I, nn. 2, 6, 9 5. Have you ever contracted or attempted marriage before? How many times? In regard to each time, please answer the following questions:

When? Where? With whom?

Is your former spouse dead? If dead, have you submitted a certificate of death? Was the former marriage declared null by the Church? Have you submitted the decree of nullity?

(Note: The pastor should further investigate here regarding the possible existence of the impediment of *crimen* or *publica honestas* here.)

Instr. n. 5 6. Have you ever taken a vow of perfect chastity? Of not marrying? To enter a religious community or take Sacred Orders? The solemn vow of a religious community? Sacred Orders?

Qu. I, n. 8 7. Do you belong to the Masons? Odd Fellows? Knights of Pythias? Or any affiliated lodge of women? Or to any atheistic society?

Instr. n. 5
Qu. I, n. 7

8. Are you related to the party whom you intend to marry? Please state the degrees of relationship: (a) by blood (b) by marriage

(If reason to suspect relationship, priest will enquire further by means of a genealogical tree.)

Have you ever baptized or acted as sponsor in baptism for the party whom you wish to marry?

Instr. n. 5

9. To your knowledge, are there any other impediments that would render this marriage invalid or illicit? (Priest should note carefully the possibility of the impediments of *abductio* and *publica honestas*.)

Instr. n. 8
Qu. I, n. 8

10. Are you at present a practical Catholic?
Are you excommunicated?
Are you giving public scandal?

Instr. n. 10
Qu. I, nn. 3, 4

11. In what parish do you now reside? How long have you resided there? In what parishes have you resided for six months since puberty (i. e. 14th yr. for man; 12th yr. for woman)?

Instr. n. 10

12. When do you intend to be married? Who will be the witnesses? Are they both Catholics?

Instr. nn. 7
Qu. I, 10

13. Are you entering this marriage of your own free will? Have you been forced in any way by any one? By any circumstance? How long have you been engaged? How long have you been keeping company with the person whom you intend to marry? Is the other party entering this marriage of his/her own free will, as far as you know?

(Give assurance that matter will be held in confidence.)

Instr. nn. 8, 9
Qu. I, nn. 13, 16, 17

14. Do you fully realize the obligations that marriage entails, especially as regards avoiding sin of birth control?
Do you intend without reservations or conditions to accept these obligations when you are married?

Instr. nn. 8, 9
Qu. I, 16, 17

15. Do you clearly understand that the marriage bond cannot be broken by any human power except by death? Do you propose to contract such marriage?

Qu. I, n. 14

16. Have you fulfilled all of the requirements of the Civil Law as to marriage license, medical tests, required delays, etc.?

Qu. I, n. 13

(Inquire as to need of catechetical instruction.)

Dispensations needed:

Date of publication of the Banns:

Given at on the day of , 19 .

_____

(Party desiring marriage)

_____

(Pastor)